

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY ,THE 08TH DAY OF JANUARY 2019 / 8TH AGRAHAYANA, 1940

WP(C).No. 8166 of 2015

PETITIONER/S:

DR. LASNA SAHIB
AGED 35 YEARS
VALIYAVEED, OPP. ASMM HIGHER SECONDARY SCHOOL,
ALATHUR P.O., PALAKKAD.

BY ADV. SRI.S.PRASANTH (AYYAPPANKAVU)

RESPONDENT/S:

- 1 KERALA VETERINARY & ANIMAL SCIENCES UNIVERSITY
REPRESENTED BY ITS REGISTRAR, POOKODE, LAKKIDI
P.O., WAYANAD DISTRICT - 673 576.
- 2 DR.JASMINE RANI.K.
ASSISTANT PROFESSOR, DEPARTMENT OF ANIMAL NUTRITION
COLLEGE OF VETERINARY & ANIMAL SCIENCES, MANNUTHY,
THRISSUR DISTRICT 680 651.
3. JITH JOHN MATHEW,
S/O.JOHN MATHAI, AGED 36 YEARS,
VASHNA THOTTATHIL HOUSE,
AMAYANNUR P.O, KOTTAYAM DISTRICT-686 019.

(ADDL.R3 IS IMPEADED AS PER ORDER DT.1.6.2015 IN
I.A.NO.6923/2015)

BY ADVS.
SRI.MILLU DANDAPANI,SC,K.V & A.S. UTY
SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SMT.AYSHA YOUSEFF SC KERALA VETERINARY AND ANIMAL
SCIENCES
SRI.THOMAS GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.11.2018, ALONG WITH WP(C).8906/2015, THE COURT ON 08.01.2019
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY ,THE 08TH DAY OF JANUARY 2019 / 8TH AGRAHAYANA, 1940

WP(C) .No. 8906 of 2015

PETITIONER/S:

DR.RAMEES T.P,
AGED 28 YEARS
THADIYAMPURAM HOUSE, CHEMMARAM, NADUVATH P.O.,
WANDOOOR, KERALA, INDIA 679328.

BY ADV. SRI.S.PRASANTH (AYYAPPANKAVU)

RESPONDENT/S:

1 KERALA VETERINARY & ANIMAL SCIENCES UNIVERSITY
REPRESENTED BY ITS REGISTRAR, POOKODE, LAKKIDI
P.O., WAYANAD DISTRICT 673576.

2 DR.DEEPTHI VIJAY
ASSISTANT PROFESSOR, DEPARTMENT OF VETERINARY
PUBLIC HEALTH, COLLEGE OF VETERINARY & ANIMAL
SCIENCES, MANNUTHY, THRISSUR, DISTRICT-680651.

BY ADVS.
SRI.MILLU DANDAPANI
SMT.AYSHA YOUSEFF SC KERALA VETERINARY AND ANIMAL
SCIENCES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.11.20187 ALONG WITH WP(C).NO.8166/2015, THE COURT ON
08.01.2019 DELIVERED THE FOLLOWING:

P.V.ASHA, J.

W.P(c).No.8166 of 2015-U

and

W.P(C).No.8906 of 2015-K

Dated this the 8th day of January, 2019

JUDGMENT

Petitioners in both these cases submitted applications for appointment to the post of Assistant Professors, in Animal Nutrition Department and in Veterinary Public Health respectively in the Kerala Veterinary and Animals Sciences University ('the University' for short) .

2. The University invited applications for appointment to the post of Assistant Professors in various disciplines, issuing notification dated 12.06.2014, which is produced as Ext.P7 in W.P(c).No.8166/2015 and Ext.P4 in W.P(c).No.8906/2015. The grievance of the petitioners is that the University made appointments by applying the principles of reservation afresh without reckoning the reservation already applied in the appointments to the very same Department before its bifurcation. Candidates belonging to certain communities are put to disadvantage; whereas certain other communities are getting double advantage.

3. The University was incorporated by bifurcating the Kerala Agricultural University by Act 2 of 2011. The Institutions and the Departments under the Agricultural University relating to Veterinary and Animal Sciences were brought under the new University. As per Section 55 of the Act, all the institutions referred

to in the schedule to the Act were transferred from the Agricultural University to the new University. The University Statutes were made in the year 2014. Immediately thereafter the University issued notification dated 12.06.2014 for selection and appointment to the post of Assistant Professors in various disciplines under the University. The petitioner in W.P(c).No.8166/2015 submitted her application for appointment in the discipline of Animal Nutrition. Ext.P8 rank list was issued on 11.02.2015. The petitioner, who belongs to Muslim community, is ranked No.5 and she is the first among the candidates belonging to that community.

4. The case of the petitioner is that the Kerala Agricultural University had issued a notification on 08.11.2006 for appointment to the post of Assistant Professors in various disciplines based on which a rank list was published on 10.04.2008 in the discipline Animal Nutrition. The petitioner claims that appointments were made upto rank No.6 and candidate with rank No.11 (Ezhava) was also appointed. The petitioner claims that the last selection in the Agricultural University was made based on Ext.P10 rank list of the year 2008. It is also the case of the petitioner that there was an NCA vacancy of Muslim in the department and Ext.P4 notification was published on 14.01.2010 inviting application for appointment against that vacancy. It is stated that W.P(C).No.35838/2010 filed for a direction to effect the appointment based on that notification is pending. It is also claimed that the Public Information Officer of the University had as per Ext.P6 letter dated 04.11.2011 informed that the NCA

vacancy in the Animal Nutrition Department was available in the respondent University.

5. Therefore, the petitioner claims that the University is bound to extend the benefit of the NCA notification to the candidates from Muslim community as it forms its liability under Section 55 to observe the principles of reservation. According to the petitioner, Rules 14 to 17 of KS&SSR are made applicable to the University. Statute 139 also makes the provisions contained in KS&SSR applicable to the teachers. It is stated that in the event of non availability of candidates for selection from any particular community such vacancy shall be kept vacant and it shall be filled up by direct recruitment from that community. According to the petitioner, the action of the University in starting the reservation roster and communal rotation afresh, has resulted in disadvantage to the Muslim community. It is pointed out that by the enactment of the University, certain departments were carved out from the Agricultural University and the appointments to this new University is in continuation of the action which was taken in the Agricultural University. It is stated that the candidates belonging to Ezhava community have got additional advantage on account of the fresh roster for communal rotation to the prejudice of candidates belonging to other communities eligible for reservation and therefore the petitioners claim that they are entitled to be appointed against NCA vacancy which was available as on the date of bifurcation of the University.

6. The 2nd respondent has filed a counter affidavit stating that 5

vacancies were available in Animal Nutrition discipline. 50% of the total vacancies goes to open category and the remaining vacancies were earmarked for the reservation communities. According to the 2nd respondent, the appointment is to be made under Section 58 of the Act observing Rules 14 to 17 of KS&SSR; when a new University was created by a statute it is an independent legal entity and when vacancies are notified the cycle of reservation has to start afresh. According to the 2nd respondent, it is not a bifurcation of the Kerala Agricultural University. It is stated that Kerala Veterinary and Animal Sciences University was established by Act 3 of 2011 and it came into force on 14.1.2010 and all activities of that University are governed by the Act and Statutes of the University and it cannot be said that appointments are made in continuation of appointments made by the Kerala Agricultural University. When the Veterinary Science Wing of the Kerala Agricultural University had branched out to form the University, options were called for, from the staff members of the undivided Kerala Agricultural University and those who opted did not conform to the reservation roster system as some of the veterinary posts were retained by the Kerala Agricultural University and some of the incumbents to the posts had chosen to remain in that University. Therefore, it became imperative to organise a fresh roster system from the date of inception of the University. It is stated that Statute is uniformly followed in respect of all the posts following reservation as per Government instructions. When the new University is formed the first reservation goes to Ezhava community and accordingly, the 2nd respondent was selected. According to the

respondents, the changed scenario on account of formation of University with an independent Statute justifies a fresh roster. It is further pointed out that the University was formed as a result of bifurcation of Kerala Agricultural University as per the University Act, 2010 and the University has its own criteria for selection of teaching and non teaching staff in accordance with Sections 57 and 58 of the Act and selection procedure is governed by statute 132, 140 and 141. Therefore, while there exists its own Statute, the University cannot make appointment in continuation of reservation roster made by the Kerala Agricultural University. Therefore, the petitioner, who secured the 5th position only, cannot claim appointment against the reservation turn. When the link between the KAU had been broken there is no option but to adopt the reservation policy as per the Statute governing the University and it has been uniformly adopted as per rules against all vacancies available in the University. A separate seniority list, separate rules and regulation and reservation roster became inevitable. It is stated that the existence of some of the Assistant Professors belonging to Ezhava community is only a matter of chance and the same cannot be a fact for a change in the communal reservation.

7. In the case of the petitioner in W.P(c).No.8906 of 2015, he is included as rank No.7 in the rank list and he is the first candidate in the Muslim category. Rank Nos.1, 2 and 5 belong to Ezhava community and they have already been appointed. The 2nd respondent, who belongs to Ezhava community, has got advantage by starting the rotation afresh. It is stated that as per the selection

conducted in the Agricultural University on the basis of notification issued on 08.11.2006, which is produced as Ext.P6, all candidates except rank No.1 were appointed and the reservation benefit was granted to Ezhava community and SC community. Muslim community was next in the rotation. Therefore, the petitioner claims that appointment should have been granted to him in continuation of the rotation observed in KAU. The petitioner has also produced the information he received in an application under the Right to Information Act in which he was informed that there are 3 Assistant Professors in Ezhava community among the Asst.Professors in the discipline of Veterinary Public Health and one of them belongs to SC community, as on 8.5.2015 and the petitioner seeks appointment in continuation of the roster followed in the KAU.

8. Having heard the contentions on either side, it would appear that the departments to which the petitioners submitted applications were shifted to the new University, consequent to the operation and implementation and operation of KVASU Act 2010. The respondents have not stated that anybody from these departments have opted to continue in the Agricultural University. Therefore, it has to be presumed that the entire department with its staff were shifted to the new University. If that be so, the department has to function with the very same status, benefits and liabilities as in the Agricultural University.

9. Section 55 of the Act read as follows:

“55. Transfer of certain Colleges, Institutions and employees to the University.-

(1) Notwithstanding anything contained in the Kerala Agricultural University Act, 1971 (Act 33 of 1971), the colleges, research stations; Veterinary hospitals

and other institutions specified in the schedule, and the attached hostels and other buildings together with the articles of furniture, libraries, books, laboratory, stores, instruments, apparatus, appliances and equipments and all other property both movable and immovable owned and managed by the Kerala Agricultural University prior to the specified date, shall along with all the properties, assets, liabilities and obligations stand transferred to, and vest in the University.

(2) The Government may, at any time after the commencement of this Act, transfer to the University any of their lands for its use on such terms and conditions as they deem proper.

(3) The Government may, at any time after the specified date, transfer to the University, the control and management of any of their colleges or institutions on such terms and conditions as they deem proper.

(4) Notwithstanding anything contained in any other Act relating to the establishment of a University in the State or in the Statutes, Ordinances, Regulations and Order made thereunder on and from the specified date, the colleges or institutions referred to in sub-section (3) shall be disaffiliated from the University to which they were affiliated on the date immediately preceding such specified date and shall be deemed to be colleges or institutions affiliated to the University.

(5) Any student of a college or institution specified in sub-section (1), who was studying for any examination of the Kerala Agricultural University, prior to the specified date, shall be permitted to complete his course in preparation thereof, and the University shall make arrangements for holding for such students, examinations, for such period as may be prescribed in accordance with the curricula of students of the Kerala Agricultural University.

(6) Every person employed by the Kerala Agricultural University, and serving in any of the colleges, research stations or institutions specified in sub-section (1) shall, based on their option, as from the specified date, be transferred to the University on the same conditions of service as were applicable to him before such transfer and continue to be governed by the same conditions of service unless and until such conditions are altered in accordance with the provisions of the Statutes and Ordinances:

Provided that no such person who is deputed from the Government to Kerala Agricultural University, shall be transferred to the University, without the prior approval of the Government:

Provided further that no person employed by the State but working in colleges, research stations or institutions mentioned in the Schedule shall be transferred to the University, unless the Government takes a decision on the status of his employment, and till then he shall continue to be governed by the conditions of service under which he was employed."

When the entire department is shifted from one place to another, though under a different enactment, I find that there is substance in the contention of Sri. Prasant, the learned Counsel for the petitioner, that a fresh reservation roster would only defeat the purpose of reservation, when the teaching staff in service in the department were appointed following the principles of reservation and on the basis of reservation roster.

Section 58 of the Act read as follows:

““58: Reservation of Appointments:- The rules for the reservation of appointments to posts under the Government in favour of Scheduled Castes or Scheduled Tribes and Other Backward Classes shall apply in the case of appointment of the teachers and non-teaching staff and other employees of the University.”

The purpose of reservation is to see that there is adequate representation of the communities eligible for reservation in tune with Rule 14 to 17 of KS&SSR. It does not envisage any undue advantage or disadvantage to any particular community. Clause 4 of Statute 132 which provides for application of principles of reservation in each department, reads as follows:

*“132.xxxx xxxx xxxxx xxxxxxx xxxxxx xxxxxx xxxxxxx xxxxxx
xxxx*

(4): In making appointments to posts in any class or category in each Department under the University, subject to the provisions contained in section 58 of the Act, the University shall observe the provisions of clauses (a), (b) and (c) of rule 14 and rules 15, 16 and 17 of the Kerala State and Subordinate Service Rules, 1958, as amended from time to time. “

Therefore, in case the existing staff of the department are those who got appointment applying the principles of reservation and in case there are teachers who got appointment against the reservation turns of Ezhava or any other community, a re-start of the reservation roster will enure to the benefit of the Ezhava community or the other communities which enjoyed the benefit of reservation again. When the representation of a particular community is gathered by way of reservation, further proceedings to make appointment from the very same community again applying the principles of reservation would amount to grant of double benefit, which is never contemplated under Rules 14 to 17 of KS&SSR. It would only amount to violation of those principles leading to under representation of other communities eligible for reservation. Over representation

by way of reservation is not envisaged by the Constitution of India. The contention of the petitioners with respect to the previous selection following the principles of reservation, based on which a candidate belonging to Muslim Community would have been eligible for appointment against the next reservation turn is not disputed except by stating that fresh roster was to be started on the enactment of the University Act 2010. Any action enabling a community which enjoyed the benefit of reservation while in Kerala Agricultural University, if gets the benefit of reservation again on the enactment of the new University, will result in prejudice to another community. Therefore, I am of the view that the University is duty bound to make appointments of Assistant Professors in these two departments in continuation of the reservation roster which was followed in the Agricultural University for these Departments. That is, it has to start appointments from the next turn in the 100 point roster as provided in Rules 14 to 17 of the KS&SSR. Otherwise, the very purpose of reservation would be defeated.

10. Though the learned Standing Counsel, relying on the judgment in ***State of Kerala v. Mohandas V.K***: 2018 KHC 144, argued that once a new Statute comes into force, no appointment can be made in accordance with the position or conditions under the old statute, I find that the said judgment was not one dealing with reservation and hence it cannot be applied to the facts of the case.

11. In this case an interim order was already passed on 13.03.2015, interdicting the appointments under the reservation turns. The candidates, who were selected have not entered appearance or filed any counter affidavit. As

appointments have been made in all other departments and nobody has raised any claim as in the case of the petitioners in these cases, the appointments made in other departments shall not be affected by the directions in this judgments,

12. Therefore, there shall be a direction to the respondent University to make appointments to the posts of Assistant Professors in the Departments of Animal Nutrition Department and in Veterinary Public Health, set apart for the reservation turns, in continuation of the reservation roster which was followed in the Agricultural University for appointment to these departments. This shall be done within a period of two months from the date of receipt of a copy of the judgment.

The Writ Petitions are disposed of with the above directions.

Sd/-

(P.V.ASHA, JUDGE)

rtr/

APPENDIX OF WP (C) 8166/2015**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 P1: TRUE COPY OF THE CERTIFICATE OF BACHELOR OF VETERINARY SCIENCE AND ANIMAL HUSBANDRY AWARDED TO THE PETITIONER BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P2 P2: TRUE COPY OF THE CERTIFICATE OF MASTER OF VETERINARY SCIENCE IN ANIMAL NUTRITION AWARDED BY THE TAMIL NADU VETERINARY AND ANIMAL SCIENCE UNIVERSITY.
- EXHIBIT P3 P3: TRUE COPY OF THE CERTIFICATE OF NET AWARDED BY THE AGRICULTURAL SCIENTISTS RECRUITMENT BOARD (ICAR) .
- EXHIBIT P4 P4: TRUE COPY OF THE NOTIFICATION DATED 14/1/2010 ISSUED BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P5 P5: TRUE COPY OF THE APPLICATION DATED 24/10/2011 UNDER THE RIGHT TO INFORMATION ACT SUBMITTED BY THE PETITIONER.
- EXHIBIT P6 P6: TRUE COPY OF THE REPLY DATED 4/11/2011 SENT BY THE PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P7 P7: TRUE COPY OF NOTIFICATION NO.KVASU/GA/A/1648/2014 DATED 12/6/2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 P8: TRUE COPY OF THE RANKED LIST DATED 11/2/2015 FOR THE POST OF ASSISTANT PROFESSOR IN ANIMAL NUTRITION PUBLISHED BY THE 1ST RESPONDENT.
- EXHIBIT P9 P9: TRUE COPY OF NOTIFICATION GA/K1/0554/2006 DATED 8/11/2006 PUBLISHED BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P10 P10: TRUE COPY OF THE EXTRACT OF THE RANKED LIST DATED 10/4/2008 FOR THE POST OF ASSISTANT PROFESSORS IN ANIMAL NUTRITION PUBLISHED BY THE KERALA AGRICULTURAL UNIVERSITY.

APPENDIX OF WP (C) 8906/2015**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1** EXHIBIT-P1: TRUE COPY OF THE CERTIFICATE OF BACHELOR OF VETERINARY SCIENCE AND ANIMAL HUSBANDRY AWARDED TO THE PETITIONER BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P2** EXHIBIT-P2: TRUE COPY OF THE CERTIFICATE OF MASTER OF VETERINARY SCIENCE IN VETERINARY PUBLIC HEALTH AWARDED BY THE INDIAN VETERINARY RESEARCH INSTITUTE TO THE PETITIONER.
- EXHIBIT P3** EXHIBIT-P3: TRUE COPY OF THE CERTIFICATE ON NET AWARDED BY THE AGRICULTURAL SCIENTISTS RECRUITMENT BOARD (ICAR) TO THE PETITIONER.
- EXHIBIT P4** EXHIBIT-P4: TRUE COPY OF NOTIFICATION NO.KVASU/GA/A/1648/2014 DATED 12.06.2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5** EXHIBIT-P5: TRUE COPY OF THE RANKED LIST DATED 11.2.2015 FOR THE POST OF ASSISTANT PROFESSOR IN VETERINARY PUBLIC HEALTH PUBLISHED BY THE 1ST RESPONDENT.
- EXHIBIT P6** EXHIBIT-P6: TRUE COPY OF NOTIFICATION GA/K1/10554/2006 DATED 8.11.2006 PUBLISHED BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P7** EXHIBIT-P7: TRUE COPY OF THE RANKED LIST DATED 10.4.2008 FOR THE POST OF ASSISTANT PROFESSORS IN VETERINARY PUBLIC HEALTH PUBLISHED BY THE KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT-P8** TRUE COPY OF APPLICATION DT.10.4.2015 FILED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT, 2005 TO THE PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT.
- EXHIBIT-P9** TRUE COPY OF THE REPLY DT.8.5.2015 SUBMITTED BY THE PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT TO THE PETITIONER.