

Dr.Arun P., Vs State of Kerala

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Court : Kerala

Decided On : Jan-15-2024

Judge : Honourable Mr.Justice Basant Balaji

Appeal No. : WP(C)/16241/2023

Appellant : Dr.Arun P.,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI
MONDAY, THE 15TH DAY OF JANUARY 2024 / 25TH POUSHA, 1945
WP(C) NO. 16241 OF 2023 PETITIONER/S: DR.ARUN P., AGED 37
YEARS, S/O. N.BALAKRISHNAN, ASSISTANT PROFESSOR,
DEPARTMENT OF ENT, GOVERNMENT MEDICAL COLLEGE,
PALAKKAD, PIN-678 013, RESIDING AT BALASADAN, SREEPADAM
AVENUE, CITY P.O., THRISUSR, PIN - 680020 BY ADVS.
S.P.ARAVINDAKSHAN PILLAY, N.SANTHA, V.VARGHESE PETER
JOSE CHRISTO, S.A.ANAND, K.N.REMYA, L.ANNAPOORNA, VISHNU
V.K., ABHIRAMI K. UDAY RESPONDENT/S:

1 STATE OF KERALA PRINCIPAL SECRETARY TO GOVERNMENT,
SCHEDULED CASTES AND SCHEDULED TRIBES DEVELOPMENT
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 2
SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 3
DIRECTOR. GOVERNMENT MEDICAL COLLEGE (IIMS), PALAKKAD,
PIN - 678013 4 PRINCIPAL GOVERNMENT MEDICAL COLLEGE
(IIMS), PALAKKAD, PIN - 678013 5 DR.ALI M.B. ASSISTANT
PROFESSOR, DEPARTMENT OF ENT, GOVERNMENT MEDICAL
COLLEGE, PALAKKAD, PIN - 678013 BY ADV SUMAN
CHAKRAVARTHY

OTHER PRESENT: SPL GP. SMT LATHA K THANKAPPAN THIS WRIT
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

(Dated this the 15th day of January 2024) The petitioner was appointed as Senior Resident at

Palakkad Government Medical College. He jointed duty on 26.5.2015 and his probation was declared in the cadre of Senior Resident [re-designated as Assistant Professor on 26.5.2017 as per Ext.P1(a) dated 18.5.2020]. The first respondent by Ext.P4, directed the 4th respondent to follow the pattern being followed in the Directorate of Medical

Education for re-designating the posts of Junior Residents/Senior Residents in Medical College, Palakkad. By Ext.P7 order dated 3.6.2019, the service of the petitioner was regularised, which was modified by Ext.P8 regularising the service with effect from the date of joining notionally without financial benefits.

2. The grievance of the petitioner is that when the post was re-designated as Assistant Professor by Ext.P24, it was

given only prospective effect. Therefore, the AGP of Rs.7,000/- also was from the date of Ext.P24 order. It is also pointed out by the petitioner that as per Ext.P8(b), the 3rd respondent has given the academic grade pay to the junior residents who were re-designated as Lecturers from the date of initial appointment. In such circumstances, the petitioner, along with other Teaching Faculty in the grade of Assistant Professors filed Ext.P9 representation before the 3rd respondent seeking parity as in the case of lecturers. Ext.P9 request was rejected by Ext.P10. Ext.P11 is the pay revision

order in respect of teaching staff of Government Medical

/Dental/Nursing /Pharmaceutical colleges in the state with

effect from 1.1.2006 and Ext.P12 is the pay revision order

with effect from 1.1.2016. In Ext.P11, in clause 7.4.(v) it is specifically stated that new recruits entering to the teaching

profession in Government Medical/Dental Colleges under Medical Education Services with Post Graduate Degree, shall be designated as Assistant Professors in the pay scale with a grade pay of Rs.7,000/-. Therefore, another representation was filed as Ext.P13, before the Honble Minister pointing out the anomalies which was declined by Ext.P14. The reason stated in Ext.Nos.P10 and P14 is that if the retrospective implementation of redesignation with effect from the date of joining is allowed, it would cause huge financial loss to the Government sector. Therefore, the petitioner has approached

this court for quashing Ext.Nos.P10 and P14 and also Ext.P16, which is a list of faculties of the Government Medical College, Palakkad, wherein the 5th respondent who joined service later than the petitioner is placed above the petitioner for considering promotion.

3. A counter affidavit is filed on behalf of the 1st

respondent, wherein it is contended that though the petitioner was appointed as Senior Resident in the department of ENT at Palakkad Medical College on

26.5.2015, the re-designation was by Government Order dated 3.10.2017 and so, the re- designation can only be effected from the date of Government

order. As per Ext.P6, G.O. dated 10.4.2019, AGP was granted to the petitioner and his pay was fixed accordingly. If the request of the petitioner is to be granted, the Asst. Professor like the petitioner would be granted non- cadre Associate Professor post under the career advancement scheme on completion of 8 years of service in the AGP of Rs.7,000/-. The petitioner is drawing a scale of pay with AGP of Rs.7,000/- with effect from 10.4.2019 and not from the re- designation date. The regularisation was done on notional basis without any retrospective financial benefit. The 5th respondent joined the service as Asst. Professor on 8.5.2017

and was regularised as per order dated 17.3.2020. The petitioner was appointed as Senior Resident on temporary basis for one year and it is not considered for promotion and career advancement promotion. He was re-designated as Asst. Professor after the appointment of 5th respondent, who was appointed as Asst. Professor initially on contract basis and then regularised along with the petitioner. The petitioner was re-designated as Asst. Professor on 3.10.2017, whereas the 5th respondent was appointed as Asst. Professor on 8.5.2017 and therefore, the 5th respondent was placed above the petitioner in the regularisation order. Ext.R1(a) is the

order dated 13.12.2017 whereby the petitioner was re-

designated as Asst. Professor.

4. A reply has been filed by the petitioner wherein it was stated that as per Ext.P4 letter, the 4th respondent was permitted to follow the pattern being followed in the

Directorate of Medical Education for redesignating the post of Junior Residents/ Senior Residents in Medical College, Palakkad. Therefore, what is implemented in Ernakulam Medical College, has to be implemented in Palakkad Medical College also. As per Ext.P6 Government Order, it was permitted to grant the AGP of Rs.7,000/- to the re-designated

Asst. Professors subject to having requisite higher qualification. The Government does not have a case that the petitioner does not have a requisite qualification. Therefore, the petitioner is entitled to get the AGP of Rs.7000/- from the date of entry into service. It was contended that the post to which the petitioner was appointed was not a temporary post and therefore, the service of the petitioner in the post of Senior Resident when re-designated as Assistant Professor, will have to be counted for promotion and career advancement professor.

5. Heard the counsel Shri.S.P.Aravindakshan Pillay for

the petitioner, special Government Pleader Smt.Latha K. Thankappan for respondent Nos.1 and 2, and standing counsel Sri.Suman Chakravarthy for respondent Nos.3 and 4.

6. It is an undisputed fact that the petitioner was

appointed on 26.5.2015 as a senior Resident in the department of ENT in Government Medical college Palakkad and his probation was on 26.5.2017. His service was regularised with effect from 26.5.2017. The 1st respondent directed the 4th respondent to follow the pattern be followed by the Director of Medical Education for redesignating the post of Junior Resident / Senior Resident in Medical College, Palakkad. Through Ext.P24 order dated 3.10.2017, the post of Junior Resident and Senior Resident was re-designated as Lecturer and Assistant Professor respectively. Through Ext.P5, the Government directed that all the senior residents of

Ernakulam Medical College have to be re-designated as Asst. Professors from the date of absorption of them in the medical service. The difference in AGP of Senior Resident with Asst. Professor is only of Rs.400/- and the scale is the same. By Ext.P7 and P8 orders, the service of the petitioner was regularised with effect from the date of joining without financial benefit. As far as Junior Residents of Medical College, Palakkad are concerned, they were re-designated as Lecturers with AGP of Rs.6,000/- from the date of their initial appointment itself by Ext.P8(b). When respondent Nos.3 and 4 granted AGP to the Junior Residents from the date of their initial appointment when they were re-designated as Lecturers, the same

treatment ought to have given to the Senior Residents when they were re-designated as Asst. Professors. The only reason stated in Ext.P10 rejecting the request of the petitioner is that there will be huge financial liability if retrospective effect is given for AGP from the date

of initial appointment. It is to be noted that only those persons, who have joined as Senior Resident before 3.10.2017 can only be re-designated as Assistant Professors and those persons who have joined after 3.10.2017 will have to complete one year of senior residency to become Asst. Professors. There are only 5 senior residents like the petitioner, who have joined the service before 3.10.2017. Therefore, the contention raised by the respondents that huge financial responsibility will be caused is without any basis, because the difference in AGP is Rs.400/- between the Senior Resident and Asst. Professor per month. The 5th respondent entered into service as a temporary hand on 8.5.2017 as per Ext.P17 and at that time his scale of pay was Rs.15,600-

39,100 with AGP of Rs.7,000/-. The regularisation of the petitioner as well as the 5th respondent was on the same day. When re-designation is done through Ext.P24, the same has to be effected from the date of initial appointment i.e., from

26.5.2015. Therefore, the petitioner is entitled for the scale of Rs.15,600 - 39,100 with AGP of Rs.7,000/- from 26.5.2015 onwards. When the AGP is fixed on redesignation as Asst. Professor from 26.5.2015 with AGP of Rs.7,000/-, the petitioner is also entitled for consequential service benefits. The 5th respondent had joined the service only in 8.5.2017 much after the petitioner joined in regular service and that too temporarily. In such a situation, the 5th respondent cannot march over the petitioner in seniority.

7. Though notice of this court was served on 5th respondent, he has not chosen to contest the Writ Petition. In the result, the Writ Petition is allowed and it is

declared that the petitioner is entitled to all the benefits in the cadre of Asst. Professor including AGP from 26.5.2015, the day on which he was appointed as per Ext.P1 with all consequential monetary benefits flowing out of it. Orders shall be passed by the respondents as declared above, within a period of 2 months

from the date of receipt of a copy of this judgment. Sd/- BASANT BALAJI JUDGE
dl/ APPENDIX OF WP(C) 16241/2023 PETITIONER EXHIBITS Exhibit-P1 TRUE
COPY OF THE ORDER NO.GMC/PKD/EB/02/2015

DATED 26.05.2015 OF THE SPECIAL OFFICER OF THE MEDICAL
COLLEGE. Exhibit- TRUE COPY OF ORDER NO.1133/E1/ GMC/PKD/
P1(a) 2020(2) DATED 18.05.2020 OF THE 3RD RESPONDENT.
Exhibit-P2 TRUE COPY OF G.O.(MS)NO.105/2016/SCSTDD DATED
03.12.2016 ALONG WITH EXHIBITS-I AND II Exhibit-P3 TRUE COPY
OF G.O.(MS) NO.80/ 2017/SCSTD DATED 03.10.2017. Exhibit-P4
TRUE COPY OF THE GOVERNMENT LETTER NO.SCSTDD-
F1/663/2017-SCSTDD DATED 08.01.2018. Exhibit-P5 TRUE COPY OF
G.O.(RT)NO.37/2017/H&FWD DATED 17.03.2017. Exhibit-P6 TRUE
COPY OF THE G.O.(RT) NO.308/2019/SCSTDD DATED 10.04.2019.
Exhibit-P7 TRUE COPY OF G.O.(MS)NO.33/2019/ SCSTDD DATED
03.06.2019 ALONG WITH THE RELEVANT EXTRACT OF THE LIST OF
FACULTIES/RESIDENTS AS ON 05.12.2018. Exhibit-P8 TRUE COPY
OF THE G.O.(MS)NO.9/2020/ SCSTDD DATED 17.03.2020 ALONG
WITH THE RELEVANT EXTRACT OF ANNEXURE-I THEREOF. Exhibit-
TRUE COPY OF THE ORDER NO.417/ E1/GMC/PKD/ P8(a) 2020(A)
DATED 25.03.2020 OF THE 3RD RESPONDENT. Exhibit TRUE COPY
OF THE ORDER NO.2419 E1/GMC/PKD/2020 P8(b) DATED
22.09.2020 OF THE 3RD RESPONDENT. Exhibit-P9 TRUE COPY OF
THE REPRESENTATION DATED NIL SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT WITHOUT ITS
ENCLOSURES.

Exhibit-P10 TRUE COPY OF THE GOVERNMENT LETTER
NO.F1/229/2019/SCSTDD DATED 20.08.2020. Exhibit-P11 TRUE COPY OF THE
RELEVANT EXTRACT OF G.O.(P)NO.425/2009/H&FWD DATED 14.12.2009
Exhibit-P12 TRUE COPY OF THE RELEVANT EXTRACT OF
G.O.(P)NO.54/2020/H&FWD DATED 11.09.2020 Exhibit- TRUE COPY OF THE
RELEVANT EXTRACT OF SPECIAL P12(a) RULES FOR THE EMPLOYEES OF

GOVERNMENT MEDICAL COLLEGE, PALAKKAD(UNDER THE SOCIETY FOR INSTITUTE OF INTEGRATED MEDICAL SCIENCES, PALAKKAD), 2018. Exhibit-P13 TRUE COPY OF THE REPRESENTATION DATED 14.08.2020 SUBMITTED BY PETITIONER AND SIMILARLY SITUATED SENIOR RESIDENTS, RE-DESIGNATED AS ASSISTANT PROFESSORS, BEFORE THE HON'BLE MINISTER FOR THE SCHEDULED CASTE AND SCHEDULED TRIBE DEVELOPMENT DEPARTMENT. Exhibit-P14 TRUE COPY OF THE GOVERNMENT LETTER NO.SCSTDD- F1/229/2019 DATED 12.11.2020. Exhibit-P15 TRUE COPY OF THE REPRESENTATION DATED 25.11.2020 FILED BY THE PERSONS LIKE THE PETITIONER BEFORE THE HON'BLE MINISTER FOR THE SCHEDULED CASTE AND SCHEDULED TRIBE DEVELOPMENT DEPARTMENT.

Exhibit-P16 TRUE COPY OF THE RELEVANT EXTRACT OF THE LIST OF FACULTIES FOR CONSIDERING PROMOTION ISSUED BY THE 3RD RESPONDENT. Exhibit-P17 TRUE COPY OF THE ORDER NO.GMC/ PKD/EB/02/2016 DATED 08.05.2017 OF THE SPECIAL OFFICER OF PALAKKAD GOVERNMENT MEDICAL COLLEGE. Exhibit-P18 TRUE COPY OF THE FINAL ORDER DATED 17.03.2023 OF THE KERALA ADMINISTRATIVE TRIBUNAL IN O.A.(EKM) Exhibit-P19 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 5TH RESPONDENT IN O.A.(EKM) 1842/2021 OF THE HON'BLE KAT. Exhibit-P20 TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER IN O.A.(EKM) 1842/2021 OF THE HON'BLE KAT. Exhibit-P21 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 3RD RESPONDENT IN O.A.(EKM) 1842/2021 OF THE HON'BLE KAT. Exhibit-P22 TRUE COPY OF THE REJOINDER FILED BY THE

PETITIONER TO THE REPLY STATEMENT FILED BY THE 3RD RESPONDENT IN O.A.(EKM)1842/2021 OF THE HON'BLE COURT. Exhibit-P23 TRUE COPY OF THE ORDER NO.3042/EA3/GMC/PKD/2020 DATED 23.12.2022 OF THE 3RD RESPONDENT. Exhibit-P24 G.O.(Ms)No.80/2017/SCSTD dated 03.10.2017 RESPONDENT EXHIBITS EXHIBIT R1 TRUE COPY OF THE ORDER GMC/PKD/EB/02/2017 DATED

(a) 13/12/2017 EXHIBIT R1 True copy of the order no.895/E1/pay fixation

(b) dated 10/06/2020

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