

Jayasree.V vs State of Kerala

Jayasree.V vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1368588

Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/19991/2023

Appellant : Jayasree.V

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945
PETITIONERS:

1 JAYASREE.V, 36 YEARS, D/O G. APPUKUTTAN NAIR,SARAYU,
KOLLODE, MOONGODE.P.O, THIRUVANTHAPURAM, PIN - 2
NAJIMI.N.A,AGED 43 YEARS,D/O ABDUL VAHAB, FATHIMAM, TC
4/635(5) SVLRA, KOWDIAR, THIRUVANTHAPURAM, PIN - 3
POORNIMA.V.N, AGED 40 YEARS,RESIDING @ FOREST OFFICE
LANE,D-80, 14/1659, VAZHUTHACAUDU, THYCADU.P.O,
THIRUVANTHAPURAM, PIN - 695014 4 GOWRIKUTTY.G.S, AGED 43

YEARS, D/O A.R.GOPALAKRISHNA PANIKKAR, HOUSE NO.440, PRASANTH NAGAR, ULLOOR,MEDICAL COLLEGE.P.O, THIRUVANTHAPURAM, PIN - 5 SHEENA.S.A. AGED 43 YEARS D/O M. SREEDHARAN, SABU NIVAS, MEKKOLLA, MANCHAVILAKAM.P.O, THIRUVANTHAPURAM, PIN - 695503 6 RAGIBALA.S. AGED 43 YEARS, D/O SREEKUMAR, PRAKKYLAM COTTAGE,THAMPURAMMUKKU,KUNNUKUZHI, HOUSE NO THARA 67, THIRUVANTHAPURAM, PIN - 695034 7 REMYA.S.L, AGED 40 YEARS, D/O SATHASIVAN.B, SINI NIVAS(KRISHNAKRIPA) TC 10/673(TC23/603) ERA 48,EDAYILAKONAM, MANNAMTHALA.P.O,, PIN - 695015 8 SREEJA.L, AGED 38 YEARS, D/O THANKAPPAN NAIR.B RESIDING @ TC 76/2379, KATTIL VEEDU, THOPPIN LINE, ANAYARA.P.O, THIRUVANTHAPURAM, PIN - 695029 9 SHYMA.V, AGED 40 YEARS, D/O VAMADEVAN, KARAMANCHERRY, NETHAJI NAGAR-84, KILIKOLLOOR.P.O, KOLLAM, PIN - 691004 10 SHERIN.S, AGED 39 YEARS, W/O MOHAMMAD ALI MANU,MENETHU PUTHENPURAYIL, VARAVILA.P.O, VAVVAKAVU,, KOLLAM, PIN - 690528 11 SOUMYA.K.S, AGED 40 YEARS, D/O G.KRISHNANKUTTY, -: 2 :- SOUMYA NIVAS, PUNNAVILA, ANAD.P.O, NEDUMANGAD, PIN - 12 SREERESMI.L.R, AGED 36 YEARS D/O K.RAJENDRAN NAIR,SREEHARAM,KANCHAMPAZHINJI.P.O,THIRUVANTHAPURAM, PIN - 695525 13 GEETHU.BG, AGED 35 YEARS, D/O BHASURENDRA BABU KURUP, SREEVISHKHAM, KALLAMBALAM.P.O, THIRUVANTHAPURAM, PIN - 695605 14 MANOJ.S.KRISHNAN, AGED 43 YEARS, S/O KRISHNAN KUTTY,SREELAKSHMI,PUNNAVILA,ANAD.P.O, NEDUMANGAD, PIN - 695541 15 ARCHANA.S.S, AGED 36 YEARS,D/O SREEKANDAN NAIR.S VISHAKOM TC 50/957, THALIYAL, KARAMANA.P.O, THIRUVANTHAPURAM, PIN - 695002 16 MANJULA.S, AGED 45 YEARS, D/O APPUKUTTAN NAIR, ANJITHAM, CHERUVILA ROAD VIZHAVOOR, MALAYAM.P.O THIRUVANTHAPURAM, PIN - 695571 BY ADV R.KISHORE (KALLUMTHAZHAM)

RESPONDENTS:

1 STATE OF KERALA TO BE REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM, PIN - 695001 2 PRINCIPAL SECRETARY, DEPARTMENT OF LABOUR AND EMPLOYMENT, SECRETARIAT, TRIVANDRUM, PIN - 695001 3 PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM, PIN - 695001 4 SECRETARY, KERALA PUBLIC SERVICE COMMISSION, PATTOM, TRIVANDRUM, PIN - 695001 5 VICE CHANCELLOR, UNIVERSITY OF KERALA, KERALA SENATE HOUSE CAMPUS, PALAYAM, TRIVANDRUM, PIN - 695034 6 ADDITIONAL SECRETARY, HIGHER EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 7 REGISTRAR, UNIVERSITY OF KERALA, KERALA SENATE HOUSE :- 3 :- CAMPUS, PALAYAM, TRIVANDRUM, PIN - 695034 8 DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION, K.P.S.C. DISTRICT OFFICE, PATTOM, THIRUVANANTHAPURAM, PIN - 695004 BY ADV Thomas Abraham

OTHER PRESENT: SMT.NISHA BOSE-SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.7.2023, THE COURT ON 25.8.2023 DELIVERED THE FOLLOWING: -: 4 :-

ANU SIVARAMAN, J.

===== W.P.(c).No.19991 of 2023 =====
===== Dated this the 25th day of August, 2023 =====

JUDGMENT

1. This writ petition is filed seeking the following reliefs:-

i) Issue a Writ of Mandamus or any appropriate writ, order or direction to the 3rd respondent to Appoint/Regularize the petitioners in the Vacancies (16 Nos.) held by them for the last 12 Years with the 7th respondent

University. i) Issue a Writ of Mandamus or any appropriate writ, order or direction to the respondents 1 to 7 to appoint the petitioners in the post of Library Assistant declaring that the petitioners are appointed by a Competent Authority in the sanctioned posts. ii) Issue a Writ of Certiorari or any other appropriate writ or direction calling upon the records pertaining to Exhibit:P1 and P3 and quash the same. iii) Issue a Writ of Certiorari or any other appropriate writ or direction calling upon the records pertaining to Exhibit:P8 and quash the same. iv) Issue a Writ of Mandamus or any appropriate writ, order or direction setting aside Exhibit P8 issued by the 37 th respondent as unconstitutional illegal in the interest of Justice. v) Issue a Writ of Mandamus or any appropriate writ, order or direction to the 4th respondent (Kerala Public Service Commission) not to fill the vacancies Claimed by the petitioners (16 Vacancies) from Exhibit:P20 in the interest of Justice. vi) Issue a Writ of Mandamus or any appropriate writ, order or direction to the 4th respondent not to issue appointment order from -: 5 :- Exhibit P20 Rank list till the disposal of this Writ Petition. vii) Issue a Writ of Mandamus or any appropriate writ, order or direction to the respondents 1 to 7 to reserve 50% of the total post reported to the Kerala Public Service Commission for the petitioners and similarly situated candidates working with the 6 respondent for the vacancies exists and generated for the next 5 Years in Kerala Universities. ix) Issue a Writ of certiorari or any appropriate writ or order by calling up the records pertaining to Exhibit:P9 to and Exhibit P17 and quash the same.

2. Heard the learned counsel for the petitioners, the learned

Government Pleader, the learned standing counsel appearing for the University of Kerala as well as the learned standing counsel appearing for the Kerala Public Service Commission.

3. It is submitted by the learned counsel for the petitioners that the

petitioners were working as Library Assistants on contract basis for the past ten years and that they are entitled to regularisation in service on account of the long

years of service put in by them. It is contended that since the petitioners were appointed after a due selection process, they are entitled to regularisation and that the action taken by the University in reporting the vacancies of Assistant Librarians to the Public Service Commission was illegal

and irregular. It is further contended that the reporting of vacancies of Assistant Librarian without awaiting for the disposal -:- 6 :- of these writ petitions cannot be countenanced. The main contention raised by the petitioners is that since they were appointed after undergoing a selection process and since they had been in service uninterruptedly for more than ten years, their services are to be regularised.

4. A statement has been placed on record by the University of Kerala stating that all contract staff are engaged in the University with a mandatory break of one working day after the expiry of

each contract period and by executing a new bond. It is submitted that the petitioners were recruited after a walk-in- interview and that the engagement memos issued to them specifically mentioned that the appointments were purely on temporary basis and that they would not be entitled to any service benefits on the basis of the temporary engagements. It is further submitted that the upper age limit for the post of Library Assistant is 30 years and that Exhibit P3(a) is not the copy of the Kerala University First Statutes.

5. It is further submitted as follows:-

The procedure for making regular appointment to the non-teaching posts in the University has been prescribed in the Kerala University First Statute, 1977. The Kerala University First University First Statute, Ordinances, 1978 prescribes the qualifications, age and method of recruitment for each sanctioned post whereas, the procedure for making appointment to non-teaching posts has been -:- 7 :- prescribed in Statute 8, Chapter 4 of the Kerala University First Statutes, 1977. As per the entry 90 of the Schedule to the Kerala University First Ordinances, 1978,

the appointment to the post of Library Assistant shall be by direct recruitment based on merit by inviting applications by advertisement in the press. The method of recruitment to non-teaching posts in the University is prescribed in Statute (8), Chapter 4 of the Kerala University First Statutes, 1977. As per the statute, the constitution of the Statutory selection Board shall comprise of the Vice-Chancellor as Chairman, Convenor of the Standing Committee of the Syndicate on Staff, Equipment and Buildings, Convenor of the Standing Committee of the Syndicate on Finance and two Syndicate members to be nominated by the ViceChancellor from time to time. The Registrar shall be the Secretary to the Board. The Board may conduct such tests as are deemed necessary to determine the suitability of the candidates for appointment.

6. It is contended that no such selection board as per Statute 8,

Chapter 4 of Kerala University First Statutes was constituted and their engagement was purely temporary based on an agreement executed with the Registrar. It is further contended that the petitioners were not engaged against any sanctioned post and they were not selected by a statutorily constituted Selection Committee. The notification dated 23.6.2018 was for appointment on contract basis for filling up the vacancies of Library Assistant in various UIT Centres, which are self financing centres run directly by the University. It is stated that posting of Libarary Assistants on contract basis in the UIT Centres is from a separate list and there is no Government sanctioned post in the UITs. It is

further contended that last notification for permanent appointment to the post of Library Assistant in the University was

-: 8 :- issued in 2005 and the last permanent appointment to the post was made in 2008 based on the ranked list published on 23.12.2005. Thereafter, the appointment of all non-teaching posts in Universities in Kerala have been entrusted to the Kerala Public Service Commission by G.O. dated 4.02.2011 and the Kerala Public Service

Commission(Additional Functions as Respects the Services under the Universities) Act, 2015 w.e.f. 29.09.2015. 57 vacancies to the post of Professional Assistant Grade II (library) have been reported to the Kerala Public Service Commission on 25.11.2022. It is stated that the petitioners were not engaged against any sanctioned post and that the posts are to be filled up in accordance with the prescribed qualifications and method of appointment. It is contended that the writ petition is therefore liable to be dismissed.

7. The learned counsel for the petitioner places reliance on the

decision of the Apex Court in Harinder Kaur and others v.Union of India and others [2009(13) SCC 90] to contend that where posts are existing and are kept vacant and where persons appointed after due selection process are continuing against such posts, their services are liable to be regularised. -: 9 :-

8. The learned counsel appearing for the University on the other hand relies on the decision of the Apex Court in Secretary, State of Karnataka and others v.Umadevi and others [2006

KHC 507]. The learned counsel for the Kerala Public Service Commission and the learned Government Pleader placed reliance on a decision of a Division Bench of this Court in Joy Joseph v. Institute of Human Resources [2021(2) KLT 309] to contend that where the method of appointment is by appointment through PSC, persons appointed on contract basis de hors the selection procedure prescribed in the statutes cannot be permitted to continue in service.

9. Having considered the contentions advanced, I notice that the

petitioners were appointed pursuant to a notification calling for appointments to the vacancies of Libarary Assistants in the UITs under the University. The appointment was specifically on a

contract basis. The petitioners admittedly did not undergo a process of selection as provided in the First Statutes for regular appointment to non-teaching posts in the University since they had undergone only a walk-in-interview presumably since

the appointment was specifically only on a contract basis for a period of one year. The decision relied on by the learned counsel for the

-: 10 :- petitioners are not applicable to the facts of the instance case. It is the specific contention of the University that separate agreements or contracts had been entered into between each of the petitioners and the university separately for each consecutive year. Their letter of engagements specifically stated that the appointment was for a limited period and that they would have no claim for regular appointment or any of the service benefits attended thereto. It is also an admitted fact that the regular method of appointment to non-teaching posts in the University is by selection through PSC.

10. In the above factual situation, I am of the opinion that the

prayers, as sought for in the writ petition cannot be granted. The petitioners who are only contract employees who had accepted appointment in the University knowing fully well that their appointment is only for a fixed tenure cannot claim regularisation in service. They cannot be permitted to hold up regular appointments to sanctioned posts in the University. The writ petition fails and the same is accordingly dismissed.

Sd/- Anu Sivaraman, Judge sj -: 11 :- APPENDIX OF WP(C) 19991/2023
PETITIONER EXHIBITS

Exhibit:P1 THE TRUE COPY OF THE EXECUTIVE ORDER

ISSUED BY THE 3RD RESPONDENT DATED 06.11.2020 Exhibit:P2 THE TRUE COPY OF THE INTERIM ORDER IN WP(C)25540/2020 DATED 2ND JUNE 2022 Exhibit:P3 THE TRUE COPY OF THE THE NOTIFICATION ISSUED BY THE 4TH RESPONDENT NUMBERED AS 1782 DATED 16TH JUNE 2021 Exhibit:P3(a) THE TRUE COPY OF THE RELEVANT PAGES OF THE KERALA UNIVERSITY FIRST STATUTES STATING THE AGE LIMIT OF THE LIBRARY ASSISTANTS Exhibit:P4 THE TRUE COPY OF THE COMMON JUDGMENT IN WP(C)

25540/2020 AND 13683/2021 DATED 19TH JULY 2022 Exhibit:P5 THE TRUE COPY OF THE JUDGMENT IN WP(C) Exhibit:P6 THE TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT NUMBERED AS G.O (RT)NO.1547/2022/HEDN DATED 20.10.2022 Exhibit:P7 THE TRUE COPY OF THE JUDGMENT IN WP(C) Exhibit:P8 THE TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT NUMBERED AS G.O(RT)NO.792/2023/HEDN DATED 02.06.2023 Exhibit:P9 THE TRUE COPY OF THE FILE NO.HSG-

A2/57/2019-HSG DATED 13.02.2021 ORDER

REGULARIZING 16 CONTRACTUAL EMPLOYEES WHO WORKED WITH THE NIRMITHI KENDRA FOR THE LAST 10 YEARS Exhibit:P10 THE TRUE COPY OF THE ORDER NUMBERED AS REGULARIZING 5 EMPLOYEES IN INDUSTRIES -: 12 :- DEPARTMENT WHO HAD WORKED FOR 10 YEARS Exhibit:P11 THE TRUE COPY OF THE ORDER NUMBERED AS G.O.(MS) NO 4/2021/ID REGULARIZING 296 CONTRACTUAL EMPLOYEES IN KELTRON DATED 03.01.2021 Exhibit:P12 THE TRUE COPY OF THE ORDER NUMBERED AS CONTRACT WORKERS IN UNITED ELECTRICALS LIMITED Exhibit:P13 THE TRUE COPY OF THE ORDER NUMBERED AS CONTRACT WORKERS Exhibit:P14 THE TRUE COPY OF THE ORDER NUMBERED AS SPORTS COUNCIL DATED 19.02.2021 Exhibit:P15 THE TRUE COPY OF THE ORDER NUMBERED AS PROFESSORS IN THE HEALTH AND FAMILY DEPARTMENT Exhibit:P16 THE TRUE COPY OF THE ORDER NUMBERED AS 16.11.2017 IN THE GENERAL EDUCATION DEPARTMENT Exhibit:P17 THE TRUE COPY OF THE ORDER NUMBERED AS IN THE CO-OPERATIVE DEPARTMENT DATED 17.02.2021 Exhibit:P18 THE TRUE COPY OF THE JUDGMENT IN UNIVERSITY OF DELHI VS DELHI UNIVERSITY CONTRACT EMPLOYEES ON 25 MARCH, 2021 Exhibit:P19 THE TRUE COPY OF THE JUDGMENT IN SLP(C) Exhibit:P20 THE TRUE COPY OF THE RANK LIST PUBLISHED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 17.06.2023

Exhibit:P21 THE TRUE COPY OF THE INTERIM ORDER

-: 13 :- INWP(C)40727/2022 Exhibit P22 THE TRUE COPY OF THE RTI SUBMITTED BEFORE THE 7TH RESPONDENT DATED 26.12.2022 Exhibit P23 THE TRUE COPY OF THE REPLY ISSUED BY THE 7TH RESPONDENTS OFFICE DATED 23.01.2023 Exhibit P24 THE TRUE COPY OF THE RTI DATED 09.03.2021 SUBMITTED BEFORE THE 7TH RESPONDENT Exhibit P25 THE TRUE COPY OF THE REPLY TO THE RTI FROM THE OFFICE OF THE 7TH RESPONDENT DATED 12.04.2021

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com