

Dr. Latha C. Vs. State of Kerala

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Dr. Latha C.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 27TH DAY OF NOVEMBER 2014 6TH AGRAHAYANA, 1936 WP(C).No. 7579 of 2014 (V) ----- PETITIONER: ----- DR. LATHA C., ASSISTANT PROFESSOR, DEPARTMENT OF ZOOLOGY, MILAD-E-SHERIEF MEMORIAL COLLEGE, KAYAMKULAM, KERALA-690 502. BY ADV. SRI.P.C.SASIDHARAN RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF COLLEGIATE EDUCATION, DIRECTORATE OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM - 695 001.

3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,

THIRUVANANTHAPURAM - 695 001.

4. THE UNIVERSITY OF KERALA, REPRESENTED BY ITS REGISTRAR,
THIRUVANANTHAPURAM - 695 001.

5. THE MANAGER, MILAD-E-SHERIEF MEMORAIL COLLEGE, KAYAMKULAM,
KERALA - 690 502. R1 TO R3 BY SENIOR GOVT. PLEADER SMT.SUNITHA
VINODH R4 BY SRI.GEORGE POONTHOTTAM,SC SRI.BECHU KURIAN
THOMAS, SC R5 BY SRI.BABU VARGHESE (SENIOR ADVOCATE) ADV.
SRI.V.NARAYANA SWAMI THIS WRIT PETITION (CIVIL) HAVING BEEN
FINALLY HEARD ON2711-2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: mbr/ WP(C).No. 7579 of 2014 (V) -----
APPENDIX PETITIONER(S)' EXHIBITS: ----- EXHIBIT P1
: TRUE COPY OF THE APPOINTMENT

ORDER

DATED110/2010. EXHIBIT P2 : TRUE COPY OF THE

ORDER

OF APPROVAL ISSUED BY THE UNIVERSITY. EXHIBIT P3 : TRUE COPY OF
THE COMMUNICATION DATED206/2013 OF THE3D RESPONDENT TO THE2D
RESPONDENT. EXHIBIT P4 : TRUE COPY OF THE COMMUNICATION
DATED910/2013 ISSUED BY THE2D RESPONDENT. EXHIBIT P5 : TRUE COPY
OF THE COMMUNICATION DATED2810/2013. EXHIBIT P6 : TRUE COPY OF
THE COMMUNICATION DATED1211/2013. EXHIBIT P7 : TRUE COPY OF THE
LETTER DATED212/2013. EXHIBIT P8 : TRUE COPY OF THE SAID
COMMUNICATION DATED2612/2013. EXHIBIT P9 : TRUE COPY OF THE
COMMUNICATION DATED2111/2013 FROM THE1T RESPONDENT. EXHIBIT
P10 : TRUE COPY OF THE SAID COMMUNICATION ISSUED DATED53/2014.
EXHIBIT P11 : TRUE COPY OF THE WORK LOAD ASSESSMENT DETAILS.
EXHIBIT P12 : TRUE COPY OF THE COMMUNICATION. EXHIBIT P13 : TRUE
COPY OF THE COMMUNICATION DATED1111/2013. RESPONDENT(S)'
EXHIBITS: ----- EXT. R3(A) : PHOTOCOPY OF THE
LETTER NO.B4/4228/13 DATED57.2013. EXT. R4(A) : TRUE COPY OF THE
LETTER NO.30985/D1/2010/HEDN, DATED SEPTEMBER11 2012. EXT. R4(B) :

TRUE COPY OF THE G.O.(MS)NO.87/2012/H.EDN. DATED 12.3.2012. /TRUE COPY/ P.S. TO JUDGE mbr/ A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.7579 of 2014
..... Dated this the 27th day of November, 2014

JUDGMENT

The petitioner was appointed as Assistant Professor of the Department of Zoology in the 5th respondent College with effect from 01.10.2010. Her appointment to the post was pursuant to selection process that was conducted in accordance with the provisions of the Kerala University Act. The said appointment was subsequently approved by the Syndicate of the 4th respondent University vide order dated 09.05.2013. Despite the approval of the appointment by the 4th respondent University, the salary and other benefits due to the petitioner were not paid by the 3rd respondent. Although, on entertaining a doubt with regard to whether or not the appointment of the petitioner was in accordance with the rules and regulations prevailing at the relevant point of time, the 3rd respondent had sought for a clarification from the 2nd respondent and the 2nd respondent had since clarified through Ext.P8 clarification dated 26.12.2013 that the work load in the 5th respondent College, as assessed by the 4th respondent University, was sufficient to accommodate the W.P.(C).No.7579 of 2014 2 petitioner also as a teacher in the said College and that the question of retrenchment of the petitioner would arise only in the event of the Sri.G.Somanathan Pillai, who was holding the charge of NCC Officer relinquished that charge on a subsequent date, the 3rd respondent did not take any further steps for sanctioning the pay and allowances due to the petitioner. The provocation for approaching this Court through the present writ petition was the issuance of a communication dated 05.03.2014 from the Government to the 2nd respondent asking the latter to furnish details of teaching courses sanctioned to the College for the purposes of making further enquiries in the matter. The said communication alerted the petitioner to the possibility of further delay in the sanctioning of pay and allowances to her. It was then that she filed the writ petition seeking a direction to the respondent to disburse her salary and allowances with interest to in terms of Ext.P2 approval granted to her

appointment by the University.

2. A counter affidavit has been filed on behalf of the 3rd respondent wherein a reference is made to Government order dated 18.01.2012 whereby the Government have authorised the Deputy Director to verify the correctness of approval of appointments made by the University on the basis of work load and W.P.(C).No.7579 of 2014 3 staff strength. The said Government order indicates that the Deputy Directors may take up the matter with the University in the event of entertaining any doubt. The Government order is cited as a reason for the delay in effecting payment of salary and allowances to the petitioner.

3. I have heard Sri.P.C.Sasidharan, the learned counsel appearing on behalf of the petitioner, the learned Senior Government Pleader Smt.Sunitha Vinod, appearing on behalf of respondents 1 to 3, Sri.Bechu Kurian Thomas, the learned counsel appearing on behalf of the 4th respondent and Sri.V.Narayanaswamy, the learned counsel appearing on behalf of the 5th respondent.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that this is a case where the appointment of the petitioner has been approved by the 4th respondent University after compliance with the procedure for approval contemplated in statute 14 of the Kerala University 1st Statute, 1979. The only doubt that was entertained by the 3rd respondent was whether the work load fixed by the University in respect of the 5th respondent College justified the W.P.(C).No.7579 of 2014 4 appointment of the petitioner as Assistant Professor in the Department of Zoology. Although a clarification was issued to the 3rd respondent by the 2nd respondent, the salary and allowances due to the petitioner were not paid even thereafter on account of the 3rd respondent taking a stand that the provisions of the Government Order, referred to above, indicated that further enquiries were required . The stand of the 3rd respondent appears to be legally untenable. As per the statutory scheme, once the work load of teachers in the 5th respondent College has been approved by the 4th respondent University, and the appointment of teachers is made on the basis of the said approved work load, then it is not open to the State Government to question the approval granted by the University to the said appointments which

are made in accordance with the provisions of the statute. This position in law is well settled, inter alia through the decisions of the Division Bench in Shalini Rachel v. Manager, Christian College (2007 (3) KLT355 and State of Kerala v. Arun George (2009 (4) KLT972. In that view of the matter, I allow the writ petition by directing respondents 1 to 3 to disburse the salary and allowances, together with interest thereon, to the petitioner, forthwith in terms of Ext.P2 approval granted to the appointment of the petitioner by the 4th respondent University. The payment as directed above shall W.P.(C).No.7579 of 2014 5 not be delayed, on any account, beyond three months from the date of receipt of a copy of this judgment. A.K.JAYASANKARAN NAMBIAR JUDGE mns/ W.P.(C).No.7579 of 2014 6 W.P.(C).No.7579 of 2014 7

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