



2023:KER:17228

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 24TH DAY OF FEBRUARY 2023 / 5TH PHALGUNA, 1944

WP(C) NO. 1662 OF 2013

PETITIONER/S:

JAYAKUMAR G
AGED 44 YEARS
ASSISTANT PROFESSOR (AGRONOMY), KRISHI VIGYAN
KENDRA, KERALA AGRICULTURAL UNIVERSITY,
P.O.KANJIRANGAD, KANNUR - 670 142.

BY ADVS.

SRI.N.SUGATHAN

SRI.S.PRASANTH AYYAPPANKAVU

SMT.VARSHA BHASKAR

RESPONDENT/S:

KERALA AGRICULTURAL UNIVERSITY
REPRESENTED BY THE REGISTRAR,
VELLANIKARA, THRISSUR - 680 654.

STANDING COUNSEL SRI. M.V. ANANDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20-01-2023, THE COURT ON 24.02.2023 DELIVERED
THE FOLLOWING:



:2:

W.P. (C) No. 1662 of 2013 - G

MOHAMMED NIAS C.P., JJ

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W.P. (C) No. 1662 of 2013 - G

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Dated this the 24th day of February 2023

JUDGMENT

The petitioner, appointed as a Farm Assistant (Agricultural Grade-II) in the Kerala Agricultural University by an order dated 14-08-1997, was later appointed as Technical Assistant as per order dated 3-4-1998 on the basis of an internal selection.

2. On completion of 8 years of service in that grade, he was granted time bound higher Grade, and the petitioner was promoted as Technical Officer Gr.II by order dated 3-6-2010 with effect from 21-4-2006. While the petitioner was holding a substantive post of Technical Officer Grade II in the University, the University issued a notification dated 9-10-2007, inviting applications for appointment to the post of Assistant Professors in various disciplines as per Ext. P3 notification. Petitioner applied for the post of Assistant Professor in the discipline of Agronomy and was appointed as per the order of the



:3:

W.P. (C) No. 1662 of 2013 - G

university dated 8-8-2011 as Assistant Professor in the scale of pay of Rs. 15600-39100. He was posted as Assistant Professor in Agronomy at Krishi Vigyan Kendra, Kannur, on relieving him from the post of Technical Assistant Grade -II on 16-08-2011. An agreement dated 17-8-2011 was also executed with the university.

3. Petitioner submits that the provisions in the Kerala Service Rules, Part - I are made applicable to the University and thus entitled to get the protection of pay that he drew earlier in the Technical Officer Grade post -II under the same University. He made a request, Ext. P8 on 14-12-2011, which was not considered. Petitioner had moved this Court in W.P. (C) No. 14254 of 2012 which was disposed of by Ext. P9 judgment directing the University to pass orders on the representation. By Ext. P10, University rejected the petitioner's request for protection of pay drawn in the post of Technical Officer Grade-II but allowed the petitioner's request regarding carrying over the leave accrued during the previous service after getting clarification from the Government. The reasons stated in Ext. P10 is that the protection of pay under Rule 37 (b) Part I KSR is applicable only in cases where appointments were made only in accordance with the special rules applicable and since the petitioner was not appointed in accordance with the special rules but as per an agreement executed by him at the time of joining the post of Assistant Professor in the UGC Scheme. Thus, contending that his



:4:

W.P. (C) No. 1662 of 2013 - G

scale of pay, increment, mode of appointment, and retirement age is entirely different under the UGC Scheme to the state's Scheme where he earlier worked, the request for protection of pay was rejected by Ext. P10, which is impugned in this Writ Petition.

4. Heard Sri.. S. Prasanth, the learned counsel for the petitioner, Sri. M.V.Anandan, Standing Counsel for Kerala University and also the learned Government Pleader.

5. Learned counsel for the petitioner submits that the Government, by SRO No. 293/1972 dated 15-6-1972, had issued a statute prescribing the conditions of service relating to officers, teachers, and other employees of the Kerala Agricultural University. Statute 4 in Part I, as amended by Notification dated 3-4-1986, provided that subject to the provisions of the Act and the Statutes and Ordinances, the conditions of service applicable to government Servants contained in the Kerala Service Rules and the Kerala State and subordinate Service Rules shall mutatis mutandis, be applicable to the University employees till such time the University adopts its own service rules and as the university has not so far adopted its own service rules, provisions of the KSR applies and accordingly, Rule 28 A of KSR Part I will also be applicable. Even going by Rule 37 (a) in Part I KSR, the petitioner's appointment as Assistant Professor is to a post lower in time-scale, and his pay has to be fixed as per Rule 37 (b).



:5:

W.P. (C) No. 1662 of 2013 - G

6. The contentions of the petitioner's are countered by the University, stating that as per Circular No. 29/96 Fin. Dated 1-6-1996, Ext. R1 (a) the scale of pay of teachers formulated by UGC and that of non-teaching staff formulated by the Government of Kerala are entirely different and cannot be linked. It is also argued that as the petitioner was appointed in the post of Assistant Professor on the basis of the UGC norms, the benefit of pay protection envisaged in Rule 37 (b) Part I KSR is not applicable. It is also argued that the petitioner's appointment to the post of Assistant Professor (Agronomy) is by direct recruitment and not by way of any special rules, and the service conditions of the posts held by the petitioner earlier and the present are entirely different in respect of qualification, mode of appointment, pay, increment, promotion, and retirement age and therefore, no parity can be drawn. University thus prayed for dismissal of the writ petition.

7. On hearing the learned counsel on either side, I am of the view that Ext. P10 order cannot be sustained for more reasons than one. The request of the petitioner to protect his pay as per the provisions in KSR, which is admittedly made applicable as per statute 4 in Part I as amended by notification dated 3-4-1986, provided the conditions of service applicable to Government servants contained in the Kerala Service Rules and the Kerala State and Subordinate Service Rules to be



:6:

W.P. (C) No. 1662 of 2013 - G

applicable to the University Employees. The scale of pay of the Post of Technical Officer Grade II of Rs. 22740-37040, whereas the Scale of Pay of Assistant Professor is Rs. 15600-39100. Since the maximum scale of pay of an Assistant Professor is higher than the Maximum of the scale of pay of a Technical officer Grade II, the appointment of the petitioner as Assistant Professor by direct recruitment is to a post carrying a higher time scale of pay and thus, he was clearly entitled to have his pay fixed in the post of Assistant Professor as per the provision in Rule 28 A, KSR Part I.

8. The contention on behalf of the University that the UGC Regulations govern the petitioner and, therefore, the provisions of the KSR did not apply to him cannot be accepted. As there is no provision in the UGC Scheme that deals with pay, grant of increments, leave, etc, relating to teachers coming under the UGC Scheme, they are to be governed by the provisions of Part I KSR. The reasoning in the impugned order to the contra cannot be sustained. Equally, the argument that the scale of pay, increment, mode of appointment, and retirement age are entirely different in the State Scheme compared to the UGC Scheme cannot be countenanced. As stated above, since the petitioner's appointment as Assistant Professor is to a post on a higher time scale, he is entitled to have his pay fixed under Rule 28A, KSR Part I. It is also be noted that the qualifications and appointment method for



:7:

W.P. (C) No. 1662 of 2013 - G

the Assistant Professor post in the faculty of Agriculture are now prescribed by the statute as amended by Notification dated 21-3-1995 and his qualifications were notified in Ext. P3 notification.

9. For the following reasons, I hold that the Ext. P10 cannot be sustained, and I quash the same. There will be a further direction to the respondent to fix the pay of the petitioner in the scale of pay of Assistant Professor (Agronomy) with effect from 17-08-2011 on the basis of the pay he was drawing last in his previous appointment as Technical Officer Grade-II with all consequential benefits.

This Writ petition is allowed as above.

**Sd/-MOHAMMED NIAS C.P.,
JUDGE**

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:8:

W.P. (C) No. 1662 of 2013 - G

APPENDIX

EXHIBITS:

PETITIONER'S EXTS:

P1: TRUE COPY OF ORDER NO. GA/B1/7920/97(I) DATED 3-4-1998 OF THE UNIVERSITY

P2: TRUE COPY OF THE ORDER GA/BA/25503/2004 DATED 3-6-2010 OF THE UNIVERSITY

P3: TRUE COPY OF NOTIFICATION DATED 9-10-2007 PUBLISHED BY THE UNIVERSITY

P4: TRUE COPY OF ORDER NO. GA/C3/2958/2011(3) DATED 8-8-2011 OF THE UNIVERSITY

EXT.P5: TRUE COPY OF THE AGREEMENT DATED 17-08-2011 EXECUTED BY THE PETITIONER WITH THE RESPONDENT

EXT.P6: TRUE COPY OF PAY SLIP DATED 1-12-2011 ISSUED BY DEPUTY COMPTROLLER OF THE UNIVERSITY TO PETITIONER

EXT.P7: TRUE COPY OF LETTER DATED 28-09-2011 OF PROFESSOR & HEAD, AGRICULTURAL RESEARCH STATION, THIRUVALLA WITH THE LAST PAY CERTIFICATE

EXT.P8: TRUE COPY OF REPRESENTATION DATED 14-12-2011 SUBMITTED BY PETITIONER BEFORE RESPONDENT

EXT.P9: TRUE COPY OF JUDGMENT DATED 20-6-2012 IN W.P.C. NO. 14254/2012

EXT. P10: TRUE COPY OF ORDER NO. GA/C2/46567/11 DATED 6-09-2012 ISSUED BY THE UNIVERSITY

RESPONDENT'S EXTS:

EXT.R(A): A TRUE COPY OF THE CIRCULAR NO. 29/96 FIN DATED 1-6-1996

EXT.R(B): a TRUE COPY OF THE EXTRACT OF THE UGC REGULATIONS, 2010