

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

WP(C) NO. 17241 OF 2020

PETITIONER:

LINSON THOMAS, AGED 40 YEARS
ASSISTANT, KANNUR UNIVERSITY, APPOZHIPARAMBIL HOUSE,
PAYYAVOOR P.O., KANNUR-670 633.

SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY
KUM.A.ARUNA
KUM.THULASI K. RAJ
SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF SOCIAL JUSTICE, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 KANNUR UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, CIVIL STATION P.O.,
THAVAKKARA, KANNUR-670 002.
- 3 VICE CHANCELLOR,
KANNUR UNIVERSITY, CIVIL STATION P.O., THAVAKKARA,
KANNUR-670 002.
- 4 REGISTRAR, KANNUR UNIVERSITY,
CIVIL STATION P.O., THAVAKKARA, KANNUR-670 002.

SRI.M.SASINDRAN
SRI.I.V.PRAMOD
SMT RESMI THOMAS-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner was appointed as an Assistant in the services of the Kannur University, by creating a supernumerary post to accommodate him, on the strength of Ext.P2 Government Order dated 07.08.2013, which provides for such a benefit to persons who are physically disabled and who had been appointed initially through the employment exchange for a period of less than 180 days.

2. The petitioner says that he was initially appointed for 179 days in the Police Department, but that when he obtained an opportunity with the Kannur University, he resigned his job and joined it, which was accepted through Ext.P4 order of appointment dated 20.12.2013. He says that, subsequently, when a regular vacancy arose, the University issued Ext.P5 order appointing him to it, acting under the provisions of Article 69(C) of Chapter IV of Volume I of the Kerala Financial Code and that his probation was also thereafter declared. He says that, however, in the meanwhile, the Government brought out another order dated 03.02.2016, a copy of which is on record as Ext.P7, whereby, a clarification is made to Ext.P2 saying that persons who are appointed on supernumerary posts will continue only on such posts and will not be entitled to any

other service benefits, including promotion or declaration of probation.

3. The petitioner says that on the basis of the afore order, the University has issued Ext.P8 cancelling his appointment in the vacancy of Office Attendant and reverting him to the supernumerary post created by them in the past. He adds that he represented against this before the Government and that when it is not properly considered, he had approached this Court and obtained Ext.P10 judgment; which finally led to Ext.P11 order, wherein, again it has been reiterated that Ext.P2, read with Ext.P7, could not grant him any benefit, including for the purpose of promotion or declaration of probation. The petitioner, therefore, prays that Exts.P7, P8 and P11 be set aside and the University be directed to grant him all benefits, as had been given to him through Ext.P5 order.

4. I have heard Smt.Thulasi K.Raj - learned counsel for the petitioner; Sri.I.V.Pramod - learned standing counsel for the University and Smt.Resmi Thomas - learned Government Pleader.

5. Smt.Resmi Thomas - learned Government Pleader, answered the afore contentions of the petitioner, contending that Ext.P2 had made it very clear even in the year 2013, that

persons like the petitioner could have been accommodated only against supernumerary posts, which would be abolished on the incumbent demitting office. She submitted that, therefore, Ext.P7 cannot be construed to be a new order, but only a clarification of the terms and conditions of Ext.P2 and therefore, that the action of the University in having shifted the petitioner to regular vacancy was incorrect and improper and that he can only be continued in the supernumerary post, as has been ordered in Ext.P7. She thus prayed that this writ petition be dismissed.

6. The learned standing counsel for the University – Sri.I.V.Pramod, submitted that his client acted faithfully in granting appointment to the petitioner in a regular vacancy, under the mandate of Kerala Financial Code; and that this was done not only in his case, but in the case of several other persons also. He added that, subsequently, the petitioner completed his probation, leading to the University issuing Ext.P6 order dated 31.10.2015 to such effect; but that when Ext.P7 was issued, they were left without any other option, but to cancel the petitioner's appointment to the regular post of Attendant by issuing Ext.P8 order dated 23.05.2016. He prayed that, therefore, no further orders be issued against his client.

7. When I consider and evaluate the afore submissions, it is indubitable that the University appointed the petitioner pursuant to Ext.P2 in a supernumerary post. He was, thereafter, shifted, along with few others, to regular vacancies by them, under the mandate of the Kerala Financial Code, particularly Article 69(C) of Chapter IV of Volume I thereof, which provides that when a supernumerary post is sanctioned, it is the duty of the head of the office/department to absorb the incumbent in the first vacancy. The probation of the petitioner was also thereafter declared, as is evident from Ext.P6; and it would have been, therefore, unnecessary for any further disturbance to this position.

8. In the meanwhile, the Government issued Ext.P7 dated 03.02.2016, clarifying that a person who has been appointed to a supernumerary post under Ext.P2 cannot be granted any benefit of either promotion or declaration of probation. Spurred by this, the University issued Ext.P8, whereby, the petitioner's appointment to the regular vacancy was cancelled and he reverted to the supernumerary post. It is against this, that the petitioner approached the Government, which has, however, also rejected his claim through Ext.P11.

9. As I have said above, the petitioner had joined the

University on the strength of Ext.P2 as early as on 20.12.2013. To do so, he had given up his employment with the Police Department, which is manifest from Ext.P3 relieving order issued by the said department. Thereafter, the petitioner was given the benefit of being appointed to a regular vacancy on 20.01.2015 and his probation was later declared through Ext.P5 on 31.10.2015.

10. Obviously, therefore, the petitioner's position could not have been altered by Ext.P7, which was issued by the Government much later, on 03.02.2016. This is more so because, in Ext.P2, there is no mention of any of the conditions enumerated in Ext.P7 and the said order only stated that sufficient number of supernumerary posts be created to appoint persons like the petitioner. Indubitably, therefore, the University was justified, in the absence of any inhibitory directions being issued to them akin to Ext.P7 at the relevant time, to have shifted the petitioner to a regular vacancy, under the provisions of Kerala Financial Code and it is pertinent that the petitioner thereafter completed his probation in the year 2015.

11. I am, therefore, of the firm view that Ext.P7, which came into effect only on 03.02.2016 - being several months

after the declaration of probation of the petitioner had been completed - could not have, in any manner, disturbed his position, nor was it necessary for the University to have ordered that he be reinstated to the supernumerary post.

12. To paraphrase, even assuming that Ext.P7 could have any application on the appointments made pursuant to Ext.P2, it would apply only to those persons who had been appointed after the date of the said order, and not to those like the petitioner who are appointed prior to it. This is indubitable because the petitioner joined the University on the strength of Ext.P2 order without being aware of any such inhibition as ordered in Ext.P7 and that retrospective operation of the said order cannot be permitted, particularly when it is only an executive order and not a legislation.

13. That being so said, the petitioner's appointment to a regular post would cause no prejudice to the Government because he was only shifted from the supernumerary post to it by the University. Of course, on such shifting, the supernumerary post would have had to be abolished and this can certainly be verified and confirmed by the Government. In other words, since the petitioner was shifted to a regular vacancy – which, in any case would have had to be filled – the

Government faces no additional financial burden; and hence I see no justifiable reason for them to now object to such appointment.

In the afore circumstances, I allow this writ petition and set aside Exts.P8 and P11; with a consequential direction to the University to grant all eligible benefits to the petitioner on the strength of Exts.P4 and P5.

Sd/- DEVAN RAMACHANDRAN
JUDGE

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APPENDIX OF WP(C) 17241/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DO 454/10C DATED 15.07.2010 ISSUED BY THE SUPERINTENDENT OF POLICE, KANNUR.
- EXHIBIT P2 TRUE COPY OF THE GO(P)63/13 SJD DATED 07.08.2013 AND THE RELEVANT PAGES OF THE LIST OF BENEFICIARIES IN KANNUR DISTRICT SHOWING THE NAME OF THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 06.12.2013 RELIEVING THE PETITIONER FROM THE POST OF LDC, ISSUED BY THE DISTRICT POLICE CHIEF, KANNUR.
- EXHIBIT P4 TRUE COPY OF THE ORDER NO.AD.A1/12568/2013 DATED 20.12.2013 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE UO NO.AD.A1/12568/2013 DATED 20.01.2015 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE AD.A1/10234/2011 DATED 31.10.2015 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE GOVERNMENT ORDER DATED 03.02.2016.
- EXHIBIT P8 TRUE COPY OF THE ORDER NO.AD.A1/12568/2013 DATED 23.05.2016 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE GO(P)NO.18/99/P & ARD DATED 13.10.1999.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 06.08.2018 IN WPC NO.18340/2016.
- EXHIBIT P11 TRUE COPY OF THE GO (RT) NO.210/2020/SJD DATED 01.06.2020.

EXHIBIT P12	TRUE COPY OF THE REPRESENTATION DATED 10.10.2018 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXHIBIT P13	TRUE COPY OF THE GO(P)NO.96/13/D.S.J. DATED 08.11.2013.
EXHIBIT P2	TRUE ENGLISH TRANSLATION OF EXT.P2
EXHIBIT P7	TRUE ENGLISH TRANSLATION OF EXT.P7
EXHIBIT P11	TRUE ENGLISH TRANSLATION OF EXT.P11
EXHIBIT P13	TRUE ENGLISH TRANSLATION OF EXT.P13