

# SUPREME COURT OF INDIA

Kerala Agricultural University

Vs.

E.K.Jayachandran Etc.

C.A.Nos. 2540-2542 of 2009

(S.B. Sinha and Cyriac Joseph JJ)

15.04.2009

## JUDGEMENT

**S.B. SINHA, J.**

1. Leave granted.

2. Whether respondents are entitled to obtain the benefit of Scale of Pay in terms of the University Grants Commission (for short, "UGC") guidelines is the question involved in these appeals. They arise out of a judgment and order dated 3.4.2008 passed by a Division Bench of the High Court of Kerala at Ernakulum in Writ Appeal Nos. 660, 680 and 748 of 2008, dismissing the appeals preferred by the appellant herein against the judgment and order dated 14.11.2007 passed by a learned single judge of the said Court in Writ Petition (Civil) Nos. 13572, 10496 and 13543 of 2006.

3. Respondents herein were appointed as Junior Assistant Professors on 14.08.1973, 21.1.1977 and 4.10.1977. They were appointed as Assistant Professors on, 02.12.1982 and 12.01.1983, 11.05.1979 respectively.

4. In the year 1988, appellant - University issued an order whereby and whereunder the decision taken by the State of Kerala upon accepting the recommendations of the Fourth Pay Commission directing grant of time-bound grade promotion to the teaching staff; pursuant whereto and in furtherance whereof, the scales of pay of Assistant Professor and Associate Professor were revised to Rs.1500-2685/- and Rs.1950-2950/- respectively. Clause VI of the Pay Revision Order provided for grant of time bound higher grade promotion (Non-cadre) to those having total ten years' of service in the first two grades taken together where there are four levels from the entry cadre to the Professor Cadre. On or about 23.3.1988, appellant - University, in terms of the said direction, ordered for grant of 1st higher grade non-cadre promotion as Assistant Professor (Higher Grade) with pay of Rs.1950-2950/-, stating:

"The matter has been considered by the Executive Committee and in consonance with the decision of the 195th meeting of Exe.

Committee held on 25.2.1988 the following orders are issued.

i) The clause (VI) of para (10) of G.O. (P) 515/85/Fin dated 16.9.85 is made applicable to 3 the

Assistant Professors of Kerala Agricultural University subject to the condition that while computing the combined length of 10 years service in the cadre, at least two years should be in the cadre of Asst. Professor."

Pursuant to or in furtherance of the said decision, concededly the designation of the Assistant Professor (Higher Grade) was changed to that of Associate Professor (Non-Cadre). They were placed in the pay scale of Rs.1950-2950/- by an order dated 20.4.1988 subject to the conditions mentioned therein. By an order issued by the appellant - University, thirty five Assistant Professors including the contesting respondents herein were granted time bound higher grade non-cadre promotion to the posts of Associate Professor (Non-Cadre) with effect from 04.10.1987, 01.04.1987 and 12.01.1987 respectively.

On or about 25.6.1990, a Scheme as recommended by UGC/Indian Council of Agricultural Research ( for short, "ICAR") and approved by the Government of Kerala was accepted by the University subject to the terms and conditions mentioned therein with retrospective effect from 1.1.1986, the relevant provisions whereof read as under:

"3.01. The revised scales (Appendix I) are inclusive of Basic Pay (as on 1.1.1986 in the 1973 U.G.C./I.C.A.R. Scale), the Dearness Pay, Dearness Allowances, Additional Dearness Allowance and 4 Interim Relief if any, admissible to teacher as on 1.1.1986.

3.02. The existing scale of pay of teachers in the University to whom the scheme is applicable and the corresponding revised scale of pay for which they are entitled are given in Appendix II.

xxx xxx xxx 5.04 Promotion to the post of Associate Professor will be through a process of selection by a selection committee to be set up under the Statutes/ Ordinance of the University and in accordance with the guidelines laid down by the I.C.A.R. from time to time. Posts of Associate Professors will be created for this purpose wherever necessary by upgrading a corresponding numbers of posts of Assistant Professors in the University.

xxx xxx xxx 5.06. Teachers in the University will be placed at the appropriate stage in the revised scales in accordance with the pay fixation formula under this scheme. Existing Assistant Professors who have completed or will complete a total period of sixteen years of service as on 1.1.1986 or thereafter will be eligible for promotion to the post of Associate Professors in the selection grade as per the provisions contained in para 5.03 to 5.05. They will also be entitled to the relaxation in years of service by 3 years if they hold Ph.D.

degree.

5.07 Promotions made before the announcement of the revised scales of pay on 1.2.1988 by the I.C.A.R. will not be reopened. However, in such cases the benefit of revision will be available to teachers only from the date of promotion.

The existing merit promotion scheme viz., Assessment, norms and Non-cadre promotion made after 1.2.1988 will be treated as cancelled. No such promotion schemes shall be in vogue from the date of issue of these orders."

Appendix I referred to in paragraph 3.01 provided for the following:

"Appendix - I "University Grants Commission/Indian Council of Agricultural Research (I.C.A.R.)

Scales of Pay of Teachers in the Universities.

"

Sl. Designation Existing Revised Scale No. Scale 1. ... ..

2. ....

4. Associate 1200- 3700-125-4950- Professor 1900 150-5700 5. ....

6. .... .

"

Appendix II thereof containing the scales of pay of teachers in University also provided for the scales of pay of Associate Professor in the following terms:

6 "Sl. Designation Existing Revised Scale of No. Scale of pay pay as (U.G.C./I.C.A.R.

on Scheme with 1.1.198 designation 6 1. ....

2. ....

3. Associate 1950- 3700-125-4950- Professor 70- 150-5700 2100- 85-2950 5. ....

Indisputably, the contesting respondents acquired their Ph.D Degrees in the years 1991, 1994 and 1999 respectively.

5. It is furthermore not in dispute that a notification was issued by the appellant - University on or about 21.3.1995 pursuant where to or in furtherance where of, inter alia the following was provided:

"h) Teachers in the University will be placed at the appropriate stage in the revised scales in accordance with the pay fixation formula under this scheme. Existing Assistant Professors who have completed or will complete a total period of sixteen years of service as on 1.1.1986 or thereafter will be eligible for promotion to the post of Associate Professor or placement in the selection grade as per provisions contained in Clause II. They will also be entitled to the relaxation in years of service by 3 years if they hold Ph.D. Degree.

i) Promotions made before the announcement of the revised scales of pay on 25.6.1990 by the ICAR will not be reopened.

However, in such cases the benefit of revision will be available to teachers only from the date of promotion. The existing merit promotion scheme viz., assessment, norms and non-cadre promotion made after 25.6.90 will be treated as cancelled. No such promotion schemes shall be in vogue after 25.6.1990. However all the service conditions existed before the introduction of UGC/ICAR scheme will be available to those teachers who opt out of ICAR Scheme."

6. An Original Petition was filed by one K. Viswambharan, who was an Assistant Professor questioning the aforementioned orders.

7. Indisputably, a Government Order No. G.O. (MS) 190/93 dated 22.9.1993 was issued granting

higher scale of pay to the teachers in the category of Assistant Professors.

Questioning the validity of the said G.O. (MS) no. 190/93 dated 22.9.1993, several writ applications were filed by Assistant Professors of other disciplines in the said University before the High Court.

A learned Single Judge of the said Court by his order dated 25.7.1994 while disposing of the Original Petition Nos. 13624/1993-V, 15938/1993-V and 16337/1993-T filed under Article 226 of the Constitution of India wherein two of the contesting respondents, namely, 8 Dr. B.K. Jaychandran, and B. Balakrishnan had been impleaded as respondents inter alia held that :

(i) the orders of the University whereby Assistant Professors, including the contesting respondents herein, were given non- cadre promotion as Associate Professor (Non-Cadre) was without authority of law;

(ii) however, no further directions was necessary to cancel such promotions; and (iii) the Associate Professors who were promoted as Associate Professors (Non-Cadre) would not be entitled to be placed in the UGC/ICAR scale of pay of Associate Professors, namely, Rs.3700-5700/-, and they could only be placed in the UGC/ICAR scale of pay of Assistant Professors.

8. Writ appeals were preferred thereagainst and by a judgment and order dated 11.9.2002, a Division Bench of the said court reversed the said judgment, opining :

"Therefore, we are of the opinion that the challenge to Ext. P 4 in so far as it protects the salary to be given to the Associate Professor (non-cadre) who were getting higher salary at the time of introduction of ICAR scale by Ext.

P.2 cannot stand. We also note that as held by the Supreme Court in Dr. Rashmi Srivastava vs.

9 Vikram University (1995) 3 SCC 653, the non- cadre promotees will not get any seniority because of their very placement in the non- cadre. Merit promotions under the I.C.A.R.

Scheme will be governed by the seniority in the cadre in which they were appointed and not in the non-cadre post. In view of the above, we are of the opinion that the learned Single Judge went wrong in not accepting Ext. P 4 and holding that the creation of the post of Assistant Professor (non-cadre) is illegal. We also note that since the Petitioners' right for promotion and other benefits are not affected, no prejudice is caused to them."

9. It is of some significance to note the stand taken by the appellant - University in their counter affidavit filed in the said Original Petition No.

13624 of 1993V, which reads as under:- "Various grounds raised in the Original Petition are neither legal nor sustainable in law. Non cadre promotions are based on the IV Kerala Pay Revision orders extended to the teachers of the Kerala Agricultural University. Promotions were made only after obtaining the approval of the authorities of the University i.e. Executive Committee/General Council. Further there are directions from UGC/ICAR to allow such promotions before the cut off date specified in Government order implementing UGC/ICAR package. Ext. P4 does not nullify the promotions, it only protects the promotions made by the University upto 25.6.1990. The personnel to whom non cadre promotions given were having the requisite general educational qualifications prescribed in the statutes and also the length of service."

10 Reliance was also placed on the resolution passed by the General Council at its meeting held on 28.11.1992; Clause (vi) whereof reads as under:

"To place/induct all Associate Professors (NC) as regular Associate Professors on Rs.3700- 5700 in UGC on the ground that the non cadre promotions were not out of way promotions but it was part of IV Kerala Government Pay Revision Orders."

10. As despite the aforementioned judgment the said scheme was not implemented in the case of the respondents, they filed a Writ Petition in the High Court of Kerala at Ernakulam, which was marked as Writ Petition (Civil) No. 26689/2004-B praying inter alia for issuance of a writ of mandamus against appellant - University to place them in the UGC/ICAR scale of pay of Rs. 3700-5700 with effect from their respective dates of promotion as Associate Professors (Non-Cadre) and to grant all consequential benefits including arrears of salary.

By reason of a judgment and order dated 24.09.2004, a learned single judge of the High Court allowed the said writ petition directing appellant to take appropriate action, stating:

11 "It is the contention of the petitioners that in view of Ext. P 7 judgment of the Division Bench of this Court in W.A. No. 1182/94, there is no impediment now in granting the placement in the UGC scale of Associate Professors (Non Cadre) (Rs. 3700-5700) as per Ext.P.6. Learned standing counsel submits that the issue is being actively considered by the Executive Committee of the University. Once the sole impediment in the matter of implementation of the scale has been cleared by the judgment in the Writ Appeal referred to above, there is no justification in delaying justice to the Petitioners. In the above circumstances, I dispose of the Writ Petition directing the Respondent to take appropriate action in the light of the judgment dated 11.9.2002 in Writ Appeal No. 1182/94, in the matter of implementation of Exts. P 5 and P 6 in the case of the Petitioners, within a period of six weeks from the date of production of a copy of this judgment along with a copy of the Writ Petition by the Petitioners. The consequential benefits for which the Petitioner are found eligible, including arrears, shall be disbursed within a period of four months thereafter"

11. However, the appellant - University passed an order on or about 25.6.2005 rejecting the said claim of the respondents in the following terms:

"1. The pay drawn in the State Scale of Pay by those teachers, who were granted the time bound higher grade for completing 10 years as per University proceedings read as 1st paper above and re-designated as Associate Professor (non-cadre) as per University proceedings read as 2nd paper above, is protected in the UGC scale of pay into which they are inducted.

2. Their pay will be fixed at the corresponding stage in the UGC scale of pay into which cadre they are inducted.

3. They will not get any seniority in the cadre merely because of their drawing higher pay by way of this pay protection.

4. The teachers, who were senior to them in the cadre and drawing lower pay as a result of this protection of pay to the juniors, are not eligible for any step up or protection of pay on par with that of their juniors.

5. The Comptroller, Kerala Agricultural University will fix the pay of the incumbents as per the rules for pay fixation."

12. The validity and/or legality of the said order was questioned by the respondents by filing writ petitions before the High Court marked as W.P.

(C) No. 10496 of 2006(Y), W.P. (C) No. 13543 of 2006 (K) and W.P. (C) No. 13572 of 2006 (N) and by a judgment and order dated 14.11.2007, the same was allowed, directing:

"I have considered the rival contentions in detail. May be there would be an anomaly as contended by the learned standing Counsel for the University. But the question is because of that anomaly, the Petitioners can be denied the benefits as per Ext. P.4 itself, perhaps the persons, who drafted Ext. P 4 may have lost sight of the fact that there are certain Associate Professors (non-cadre) existing in the service for whom they failed to make provision while granting revised scales of pay. However, when a teacher is actually drawing the salary in a particular scale of pay and scales of pay of all posts are revised as per Ext. P 4, in view of Sub Clause 3.02 quoted above, the Petitioners would be entitled to the scale of pay corresponding to the scale of pay which they are holding although they may not be entitled to claim induction as Associate Professors. It cannot be disputed that the scale of pay corresponding to Rs.1950-2950, as per Ext. P 4 is Rs.3700-5700. Therefore, notwithstanding the anomaly noted above, unless orders are passed to remove that anomaly, the Petitioners cannot be denied the benefit of sub clause 3.02 read with Appendix II of Ext. P4. They would be so entitled with effect from 1.1.86 or the date of promotion as Associate Professors (non-cadre) whichever is later. Therefore, the Petitioners in Writ Petition Nos. 10496/06, 13543/06, 13572/06 have become entitled to the scale of pay Rs.3700- 125-4950-150-5700 with effect from 1.1.86, 12.1.87 and 4.10.87. It is so declared. The University shall pass appropriate orders in accordance with the above finding and disburse monetary benefits thereof within three months from the date of receipt of a copy of this judgment."

13. Writ appeals preferred thereagainst by the appellant have been dismissed by reason of the impugned judgment.

14. Mr. B.V. Deepak, learned counsel appearing on behalf of the appellant in support of these appeals would submit:

i. The UGC/ICAR scales of pay had no application in respect of Associate Professor (Non-Cadre) with effect from 1.1.1986 as the eligibility criteria laid down therein were not fulfilled by the respondents.

ii. Having regard to the scheme of the Act and the Statute governing the terms and conditions of service of the respondent, purported promotion of the Assistant Professors to the posts of Associate Professor (Non-cadre) must be held to be illegal.

iii. In view of the fact that the respondent having not been appointed in a regular establishment of the University, were not entitled to the UGC scale of pay, and, thus, the High Court committed a serious illegality in following the earlier Division Bench judgment passed in Writ Appeal Nos. 1102, 1400, 1430 and 1176 of 1994 that too without arriving at a finding that the respondents were entitled to the grant of UGC scale of pay.

iv. In any event, clause 3.01 being applicable to the case of appellant, the conditions laid down in Appendix I was to apply and not those contained in Appendix II thereof which was a surplusage. In any event, respondents having not fulfilled the criteria of promotion as contained in clause 5.04, 5.05, 5.06 and 5.07 thereof, the respondents were not eligible 15 for promotion as on 1.1.1986, the

impugned judgment cannot be sustained.

15. Mr. K. Rajeev, learned counsel appearing on behalf of the respondents, on the other hand, would urge:

i. Appellant - University itself having accepted the Scheme and having supported the case of the respondents could not take a new stand in the writ petition filed by the respondent.

ii. In any event, in terms of the Notification itself issued by the appellant - University the promotion made upto 25.6.1990 having been protected, the impugned judgment does not suffer from any legal infirmity.

iii. ICAR having deposited the entire amount with University, it is not, in any event, a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

16. The contesting respondents were appointed / promoted to the post of Associate Professor (Non-Cadre). The Scheme did not exclude their cases. Indisputably, they were promoted to the said posts on the basis of the decision taken by the University itself.

17. We do not find any anomaly in clauses 3.01 and 3.02 of the Scheme. Clause 3.01 merely limits the starting scale of pay to be inclusive of the elements stated therein; whereas clause 3.02 provides for substitution of one scale of pay by another as contained in Appendix II thereto. It is, therefore, not correct to contend that the scales of pay of teachers in University as substituted in terms of the said Scheme were wrongly noted in Appendix II thereof.

18. It is not in dispute that in terms of order dated 2.8.1988 the respondents were promoted to the post of Associate Professor, with effect from 1987. The conditions for promotion laid down in the Scheme were to apply to future promotions and not to the promotions which had already been granted. Keeping that fact only in view, the promotions made upto 1.2.1988 were protected in terms of the UGC Scheme providing that the existing merit promotion scheme, namely, Assessment, norms and Non-cadre promotion made after 1.2.1988 would be treated as cancelled. We have noticed hereinbefore that in terms of the aforementioned Notification dated 4.4.1995 such protection in regard to the promotion was extended upto 25.6.1990 subject to the condition that 17 in such cases the benefit of revision will be available to teachers only from the date of promotion.

19. The learned single judge of the High Court by reason of its judgment and order dated 14.11.2007 categorically held that the respondents would be entitled to the benefit of revised scale of pay with effect from 1.1.1986 or from the date of promotion as Associate Professor (Non-Cadre), whichever is later. We, therefore, are not in a position to agree with the contention of Mr. Deepak that the criteria laid down in terms of the aforementioned UGC/ICAR Schemes must be considered having regard to the cut off date specified therein, i.e., 1.1.1986 only.

Appellant-University itself, as noticed hereinbefore, supported the case of the respondents. It itself raised a contention that such promotions were made in terms of the resolutions passed by the General Council.

20. We may also notice that a similar stand was taken by the University in a letter dated 1.1.93 addressed to the Secretary to Government, which is to the following effect:

"It may be noted that the non cadre promotion as Associate Professor (NC) was not an out of way promotion as it was part of the IV Kerala pay Revision Orders. It was specified that where there exist 4 levels from entry cadre to Professors as in professional Colleges, 10 years service in the lower two cadres put together entails an incumbent to the third level viz.

Associate Professor (NC).

18 In Engineering Colleges and Calicut University, the non cadre promotions upto 28.2.1989 and 31.3.1990 respectively were reckoned. Therefore the Teachers of KAU demanded that the non cadre Associate Professorship may also be reckoned and a scale to scale induction may be granted placing them in the scale of Rs.3700-5700. It was under these circumstances that the General Council resolved to request the Government that all the Associate Professor in the scale of Rs.1950- 2750 (pre revised) may be placed in the scale of Rs.3700-5700 irrespective of whether they were cadre Associate Professor or non cadre Associate Professor."

By a letter dated 20.3.1991, it was stated:

"The meeting of the Executive Committee on 13.3.1991 decided to recommend to the Government to give permission to induct all Assistant professors both directly selected and selected from among Junior Asst. Professors in senior scale as on 1.1.86 or the date of their selection whichever is later and also to induct of Associate Professor (NC) as Assoc. Professor in the Scheme. The induction of Asst. Professor to senior scale is highly essential since protection of cadre seniority would be difficult otherwise.

For instance, an Asst. professor directly recruited in 1987 will become junior to Junior Asst. Professor as on 1.1.86. It is evident that the former had been enjoying cadre seniority as on date of appointment and till the date of induction. This may cause much heart burns to the Asst. Professors who were recruited directly by the University. It may go against the provisions of KSSR which protect cadre seniority.

19 I request that this anomaly may be rectified by sanctioning senior scale to all directly recruit Asst. Professors as on 1.1.86 or from the date of their recruitment whichever is later."

21. Pursuant to or in furtherance of the said request only the statutes were amended. Such amendment in the statute was indisputably made pursuant to the recommendations made by UGC/ICAR which was accepted by the appropriate authorities of appellant - University. It is from that point of view only the Scheme framed by the UGC should be taken into consideration.

22. There cannot be any doubt whatsoever that the Associate Professors (Non Cadre) were, in fact, included within the purview of the said Scheme. The amendments made by the State in terms of the request made by appellant - University, in our opinion, should be construed having regard to the grounds on the basis whereof the request for amendment of statute was made.

23. Promotions of the respondents, therefore, having received the statutory protection and the High Court having directed that the benefit of the revised scale of pay should be extended to the contesting respondents only from the date of their promotion, in our considered view, the impugned judgment does not suffer from any legal infirmity.

24. These appeals, therefore, being devoid of any merit are dismissed with costs. Counsel's fee assessed at Rs.10,000/- to be paid to each of the counsel appearing on behalf of the contesting

respondents.