

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 27TH DAY OF OCTOBER 2022 / 5TH KARTHIKA, 1944

WP(C) NO. 28550 OF 2022

PETITIONERS:

- 1 SEBASTIAN JOSEPH, AGED 56 YEARS
S/O. JOSEPH SEBASTIAN, RESIDING AT CHENNITHALA HOUSE,
PONKUNNAM P.O., KOTTAYAM-686506
- 2 DR. PRATHEEP P.S., AGED 54 YEARS, S/O. B. PRABHAKARAN
PILLAI, RESIDING AT CHAITHRAM, KARUVATTA, ADOOR P.O.,
PATHANAMTHITTA -691523. (NOW WORKING AS PROFESSOR, P.G
AND RESEARCH DEPARTMENT OF HISTORY, CATHOLICATE
COLLEGE, PATHANAMTHITTA-689645).

BY ADV T. RAJASEKHARAN NAIR

RESPONDENTS:

- 1 THE UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, UNIVERSITY CAMPUS,
THIRUVANANTHAPURAM- 673635.
- 2 THE VICE CHANCELLOR, UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, KERALA- 673635.
- 3 UNIVERSITY GRANT COMMISSION, REPRESENTED BY ITS
SECRETARY, BAHADUR SHAH ZAFAR MARG. NEW DELHI - 110002.

SRI. THOMAS ABRAHAM
SRI. S. KRISHNAMOORTHY, CGC
SMT PARVATHY K-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”**JUDGMENT**

The petitioners impugn Ext.P1 notification of the University of Kerala, to the extent to which it imposes an upper age limit of 50 years for candidates to apply to the posts of Professor to teach in its various Departments.

2. Sri.T.Rajasekharan Nair – learned counsel for the petitioners, vehemently argued that the afore stipulation in Ext.P1 is illegal because the applicable Regulations of the University Grants Commission, namely the “UGC Regulations on Minimum Qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2018” (for short 'UGC Regulation 2018'), do not prescribe any such inhibition; and therefore, must be construed that any person who is otherwise qualified, will be eligible to apply until the age of superannuation. He argued that, however, the Kerala University appears to be banking upon its First Statutes of the year 1977, to hold otherwise; and that, going by the various judgments of the

Hon'ble Supreme Court, including the recent one, namely **Professor (Dr.) Sreejith P.S. v. Dr.Rajasree M.S. & Ors.** (Civil Appeal Nos.7634-7635 of 2022), the University is bound by the "UGC Regulations" and cannot act contrary to the same. He thus prayed that Ext.P1, to the extent impugned, be set aside and his clients be allowed to participate in the selection process *de hors* the fact that they have crossed 50 years in age.

3. Sri.S.Krishnamoorthy – learned standing counsel for the UGC, very pertinently, submitted that the "UGC Regulations 2018" do not provide for any upper age limit for candidates to apply to the posts of Professor and that this has been specifically excluded by it, keeping mind the inviolable desideration of experienced persons being selected. He argued that the "First Statutes" of the Kerala University cannot override the "UGC Regulations" and that this is not a case where there is a lacuna in the said Regulations, but it was consciously decided not to have any upper age limit for the posts of Professor.

4. Sri.Thomas Abraham - learned standing counsel for the Kerala University, however, submitted that when the

“UGC Regulations 2018” is silent on an issue, the “First Statutes” of the University would complement it. He pointed out that, as per Statute 5A of Chapter III of the Kerala University First Statutes 1977, the maximum age limit for appointment by direct recruitment to the post of Professor is 50 years. He submitted that, therefore, Ext.P1 is irreproachable.

5. When I analyse the afore syllogistic and rival positions, it is indubitable that when the “UGC Regulations” occupy the field, the “First Statutes” of the Kerala University cannot be in conflict. This is the mandate of the various judgments of this Court and that of the Hon'ble Supreme Court, including in **Sreejith** (*supra*).

6. Therefore, the real question is whether there is a lacuna in the “UGC Regulations 2018”, so as to enable the University to even consider supplementing it through the provisions of their “First Statutes”.

7. As I have seen above, Sri.S.Krishnamoorthy takes the affirmative stand that the “UGC Regulations 2018” did not stipulate a higher age limit for the purpose of appointment to the posts of Professor deliberately and that

this is not an omission, since the intent of the Commission was to ensure that every person, who is otherwise qualified and eligible, should have an opportunity at the selection process.

8. This being so, it is obvious that there is no lacuna in the “UGC Regulation 2018”; and I, therefore, cannot countenance the arguments of Sri.Thomas Abraham - learned standing counsel for the University, that the “First Statutes” of the University would come to play.

9. To paraphrase, when the “UGC Regulations 2018” has deliberately and consciously refused to impose the stipulation of an upper age limit for the purpose of appointment as a Professor, I fail to understand how any such contra - stipulation in the “First Statutes” of the Kerala University, particularly when it was introduced as early as in the year 1986 – much before the “UGC Regulation” were framed - can operate to the detriment of persons like the petitioners.

10. I am persuaded to the afore view also because of Ext.P8 order, which has been issued by the Government of Kerala as recently as on 17.08.2019, relaxing the upper age

limit criterion for the purpose of direct recruitment to the post of Associate Professors in the various Universities in the State. Indubitably, the Government of Kerala was also aware that such a stipulation is untenable, when they made the said order; and I am sure that the Kerala University cannot act contrary to such settled position.

11. In the afore circumstances, I am left without doubt that the petitioners are entitled to relief.

Resultantly, I allow this writ petition and direct the competent Authority of the University to consider the application of the petitioners also and call them for interview, subject to them satisfying all eligible criteria and qualifications, *de hors* the fact that they have crossed age of fifty.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu

APPENDIX OF WP(C) 28550/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE PHOTOCOPY OF THE RE-NOTIFICATION DATED 1.8.2022 ISSUED BY THE 1ST RESPONDENT UNIVERSITY
- Exhibit P2 A TRUE PHOTOCOPY OF THE REGULATIONS PUBLISHED BY THE U.G.C ON 18.7.2018
- Exhibit P3 A TRUE PHOTOCOPY OF ORDER DATED 2.9.2019 ISSUED BY THE 1ST RESPONDENT UNIVERSITY
- Exhibit P4 A TRUE PHOTOCOPY OF THE SOFTWARE FOR CALCULATION OF RESEARCH SCORE SUBMITTED BY THE 1ST PETITIONER
- Exhibit P5 A TRUE PHOTOCOPY OF THE SOFTWARE FOR CALCULATION OF RESEARCH SCORE SUBMITTED BY THE 2ND PETITIONER
- Exhibit P6 THE TRUE PHOTOCOPY OF THE CURRICULUM VITAE IN RESPECT OF ACADEMIC QUALIFICATION, PUBLICATION IN UGC LISTED, THE OTHER RESEARCH PUBLICATIONS AND THE AWARDS AND FELLOWSHIP RECEIPT BY THE 1ST PETITIONER
- Exhibit P7 THE TRUE PHOTOCOPY OF THE CURRICULUM VITAE IN RESPECT OF ACADEMIC QUALIFICATION, PUBLICATION IN UGC LISTED, THE OTHER RESEARCH PUBLICATIONS AND THE AWARDS AND FELLOWSHIP RECEIPT BY THE 2ND PETITIONER
- Exhibit P8 A TRUE PHOTOCOPY OF THE ORDER DATED 17.8.2019 ISSUED BY THE GOVERNMENT
- Exhibit P9 A TRUE PHOTOCOPY OF THE NOTIFICATION ISSUED BY THE KANNUR UNIVERSITY FOR THE POST OF ASSOCIATE PROFESSOR

Exhibit P10 A TRUE PHOTOCOPY OF THE REPRESENTATION
SUBMITTED BY THE PETITIONERS JOINTLY
BEFORE THE 2ND RESPONDENT VICE-
CHANCELLOR

Exhibit P11 A TRUE PHOTOCOPY OF THE REPRESENTATION
SUBMITTED BY THE PETITIONERS BEFORE THE
CHANCELLOR OF UNIVERSITY

Exhibit P12 A TRUE PHOTOCOPY OF THE LETTER DATED
23.8.2022 ISSUED BY THE 1ST RESPONDENT