

State Of Kerala Vs Sunny Joseph

Court: High Court Of Kerala

Date of Decision: Jan. 13, 2025

Hon'ble Judges: A.Muhammed Mustaque, J; P.Krishna Kumar, J

Bench: Division Bench

Advocate: Nisha Bose, Benny Gervacis, Abi Benny Areeckal, Bea Mary Benny

Final Decision: Allowed

Judgement

P.Krishna Kumar, J.

1. The respondents who were working as Librarian Grade I in the Common Pool Librarians under the Higher Education Department passed the

National Eligibility Test (NET) conducted by the University Grants Commission (UGC) on 18.09.2012 and 25.03.2013, respectively and thereby

became eligible for promotion to the UGC Scheme. As per Annexure A3 order, the respondents were posted as UGC Librarians in the UGC Scheme

by stipulating that till their pay is fixed in the UGC Scheme, they will be eligible only for their existing pay in the State scale.

2. The respondents submitted a representation to the Government claiming that as per Annexure A8 Government order, the scale of pay granted to

the College Librarians is also accepted for UGC Librarians under the Common Pool, and the UGC Librarians will be given further placement after

eight or sixteen years, taking into account their service starting with Librarian Grade I under the Common Pool and thus the respondents are also

entitled to three placements (Librarian Senior Scale, Librarian Selection Grade and Librarian Special Scale) under UGC scale as they have completed

more than eighteen years service. The respondents also contended that as per Annexure A10 Government order, a person promoted to the UGC scale

would get the protection of pay if the UGC pay is lower than the existing pay.

3. On 2.7.2018, the Government issued Annexure A15 order stating that even though the respondents were working as Librarians Grade I from the

year 2000, they acquired UGC qualification only after 12/13 years, and thus they could claim UGC scale only after they qualified NET. It is further

stated, as per Annexure A8 Government order dated 19.1.2006, only UGC qualified Grade I Librarians can be selected to the post of UGC Librarian.

It is also observed in Annexure A15 that though the Government had taken a lenient view in the case of certain Librarians, it was done in the early

days by considering the preliminary stage of the UGC Scheme in the stream of Librarians. It was also observed that the Accountant General fixed the

pay of the applicants as directed by the Government.

4. The respondents approached the Kerala Administrative Tribunal to set aside Annexure A15 order and for pay fixation reckoning their prior service

from 2000 onwards as Librarian Grade I. Their contentions were mainly based on Annexure A8 Government Order and the two precedents as

evidenced by Annexures A11 and A18 wherein the Government had given similar benefits to two Librarians.

5. The Tribunal accepted the claim of the respondents and directed the Government to place them in the Senior Scale and Selection Scale, reckoning

their service as Common Pool Librarian Grade I, as has been granted in Annexure A11 and A18 orders, and further directed to release the arrears of

pay within two months.

6. In this original petition, the Government challenges the decision of the Kerala Administrative Tribunal mainly on the following grounds:

(i) Annexure A8 Government Order specifically provides that UGC Librarians will be given further placement after eight or sixteen years subject to

the conditions stipulated for such placement in the UGC Scheme as mentioned in paragraph 6 of G.O.(Ms)No.87/91/HEdn. dated 9.4.1991, but the

Tribunal omitted to note this.

(ii) NET qualification is a basic qualification for placing the incumbents in UGC Librarian status as per clause 4.5.3 of the UGC Regulations, 2010 and

thus when the respondents got qualified only on 18.09.2012 and 25.03.2013 respectively, they could not be given senior scale placements in UGC

Librarian post from an earlier date.

(iii) As per Annexure A8, only the Librarians Grade I who are qualified as per UGC Scheme can be selected to the post of UGC Librarians, but the

respondents acquired UGC qualification only after 12/13 years and hence the benefits cannot be given from a previous period.

(iv) The relaxation in qualification granted by the Government to certain Librarians as per Annexure A11 and A18 cannot be extended to the

respondents as the said relaxation was granted in early days of implementation of UGC scheme on considering the preliminary stage of the scheme

and as a special case for uplifting the quality of the Librarians attached to the academic institutions.

7. Heard the learned Senior Government Pleader and the learned counsel appearing for the respondents.

8. The learned Senior Government Pleader, learned Senior Counsel, Government Pleader assailed the findings of the Tribunal by referring to the decision in HAV (OFC)

RWMWI Borgoyary and Others v. Union of India and Others (2019 KHC 7217), wherein it was observed that if the authorities had given some

benefits to ineligible persons by mistake and contrary to law, a claim cannot be made by other ineligible persons. The learned Government Pleader

further placed reliance on the decisions in Radhakrishnan Pillai D. (Dr.) v. Travancore Devaswom Board, and Others, (2016, (2), KHC,

119) and Tinku, v. State of Haryana (2024 KHC OnLine 6629) to buttress the contentions of the state.

9. The reason for accepting the claim of the respondents is evident from paragraphs 7 and 8 of the impugned order of the Tribunal, which read as

follows:

“7. Though the respondents have filed a reply statement, no justifiable reasons are stated as to why this benefit is denied to the applicants. It has been stated in

the reply statement that the applicants obtained NET qualification after 12 years of service of Librarian Grade I. But Annexure A8 does not provide any such

restrictions regarding the grant of placement in UGC scale. Referring to Annexure A11 order, the learned counsel for the applicants points out that the incumbent

therein, Sri.Raveendran obtained UGC qualification after rendering 15 years of service as Common Pool Librarian Grade I. But in his case, senior scale and selection

scale under the UGC scale was sanctioned without any objections. In such circumstances, the objections raised against the grant of proper placement to the

applicants saying that there has been delay in acquiring the NET qualification is absolutely discriminatory and illegal.

8. The refusal of the respondents to accept the claim of the applicants for proper placement in the UGC scale on the basis of Annexure A8 Government Order cannot

be sustained and Annexure A15 order is therefore set aside.”

(emphasis added)

10. From the above, it is evident that the Tribunal arrived at the said finding for two reasons, viz., Annexure A8 does not provide any restrictions

regarding grant of placement in UGC scale even if NET qualification is obtained belatedly; and one Sri.Raveendran, who obtained UGC qualification

after rendering 15 years of service, was given senior scale and selection scale. However, it is specifically provided in Annexure A8 that further

placement after eight or sixteen years will be given only to UGC Librarians and that will be subject to the conditions stipulated for such placement in

the UGC scheme. Thus the first observation of the Tribunal is apparently incorrect. As per Annexure A8, the respondents cannot claim the said

benefit for a period during which they did not acquire the essential qualification.

11. Further, in Annexure A15, the Government has specifically explained that relaxation given in the matter of qualification to the Librarians at the

early stage of implementation of the UGC scheme cannot be extended to the respondents. Merely for the reason that the Government had given

exemption to one or two Librarians in yesteryears, the Tribunal is not justified in directing the Government to extend the said benefits to the

respondents for a period during which they did not possess the required qualification. The consideration of the Government while granting exemption

to those persons may be different from the circumstances of the respondents. The Tribunal did not also notice the reason given by the Government for

not extending similar benefits to the respondents. In the said circumstance, the impugned order is liable to be set aside.

12. However, the respondents contended that as per Annexure A10, Librarians Grade I who are placed in the UGC Scheme would be given pay

protection if they get a lesser pay compared to the non-UGC candidates, but many of their juniors were given promotions in the normal cadre and they

were getting higher pay. If such a situation prevails even now, the Government is bound to address that issue at the earliest.

The Original Petition is allowed and the impugned order is set aside.