

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

RP.No. 962 of 2013 (C) IN WP(C).23229/2012

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AGAINST THE JUDGMENT IN WP(C) 23229/2012 of HIGH COURT OF KERALA
DATED 19.03.2013**

PETITIONER/2ND RESPONDENT :

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UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, UNIVERSITY CAMPUS
KARIYAVATTOM, THIRUVANANTHAPURAM-695 034.**

**BY ADVS.SRI.GEORGE POONTHOTTAM,SC,KERALA UTY.
SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA
SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA**

RESPONDENTS/PETITIONERS AND RESPONDENTS 1, 3 TO 5:

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- 1. RENJITH KUMAR Y., AGED 31 YEARS
ASSISTANT PROFESSOR, DEPARTMENT OF MATHEMATICS
MILAD-E-SHERIF MEMORIAL COLLEGE, KAYAMKULAM-690 502.**
 - 2. SHABNAM A.
ASSISTANT PROFESSOR, DEPARTMENT OF BOTANY
MILAD-E-SHERIF MEMORIAL COLLEGE, KAYAMKULAM-690 502.**
 - 3. PRINCIPAL
MILAD-E-SHERIF MEMORIAL COLLEGE, KAYAMKULAM-690 502.**
 - 4. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
KOLLAM-691 001.**
 - 5. DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, THIRUVANANTHAPURAM-695 001.**
 - 6. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**

**R1-R2 BY ADVS. SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)**

**R3 BY ADVS. SRI.BABU VARGHESE (SR.)
SRI.C.V.ALEXANDER**

**R4-R6 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL
R BY ADV.SMT.NAVA VARGHESE**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 04-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE - I : COPY OF THE COMMUNICATION NO.B5/10783/12 DATED 30.01.2013

ANNEXURE - II : COPY OF THE APPOINTMENT ORDERS ISSUED TO THE 1ST AND 2ND RESPONDENTS DATED 3.10.11 AND 21.2.2012

ANNEXURE - III : COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK MAINTAINED IN RESPECT OF SRI.K.P.SREEKUMAR

ANNEXURE - IV : COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK MAINTAINED IN RESPECT OF DR.USHAKUMARI

ANNEXURE - V : COPY OF THE LETTER DATED 31.05.2013

ANNEXURE - VI : COPY OF THE COMMUNICATION DATED 21.06.2013

ANNEXURE - VII : COPY OF THE COMMUNICATION DATED 25.06.2013

ANNEXURE - VIII : COPY OF THE ORDER NO.AC.FI/1/036199/2009 DATED 04.01.2010 FIXING THE WORKLOAD AND SANCTIONING THE NUMBER OF TEACHERS AT THE COLLEGE

ANNEXURE - IX : COPY OF THE COMMUNICATION DATED 01.07.2013 GIVEN TO THE UNIVERSITY

ANNEXURE - X : COPY OF THE ORDER NO.38923/D1/2012/H.EDN DATED 25.05.2013

ANNEXURE - XI : COPY OF THE APPOINTMENT ORDER ISSUED BY THE RESPONDENT COLLEGE APPOINTING SRI.K.P.SREEKUMAR IN THE DEPARTMENT OF MATHEMATICS

ANNEXURE - XII : COPY OF THE APPOINTMENT ORDERS ISSUED BY THE RESPONDENT COLLEGE APPOINTING DR.USHAKUMARI B. IN THE DEPARTMENT OF BOTANY

RESPONDENTS' ANNEXURE :

ANNEXURE FILED ALONG WITH COUNTER AFFIDAVIT DATED 8.1.2014.

ANNEXURE R3(a) : COPY OF G.O.(MS)NO.20/2013/H. EDN. DATED 25.1.2013.

ANNEXURES FILED ALONG WITH ADDL. COUNTER AFFIDAVIT DATED 8.6.2015.

ANNEXURE R3(a) : COPY OF THE APPOINTMENT ORDER NO.MSMT/TS/2/2011-12 DTD.01.06.2011

ANNEXURE R3(b) : COPY OF THE APPOINTMENT ORDER NO.MSMT/TS/2/2011-12 DTD.01.06.2011

ANNEXURE R3(c) : COPY OF THE G.O.(RT)NO.1392/2011/H.EDN. DATED 31.08.2011

ANNEXURE R3(d) : COPY OF THE STATEMENT SHOWING THE DETAILS IN RESPECT OF THE 4 TEACHERS APPOINTED.

ANNEXURES FILED ALONG WITH COUNTER AFFIDAVIT DATED 28.10.2015

ANNEXURES R3(f) : COPY OF THE LIST OF TEACHERS IN PLACE IN THE DEPARTMENT OF MATHEMATICS AS ON 03.10.2011

ANNEXURE R3(g) : COPY OF THE LIST OF TEACHERS IN PLACE IN THE DEPARTMENT OF BOTANY AS ON 21.02.2012

ANNEXURES FILED ALONG WITH ADDL. COUNTER AFFIDAVIT DATED 12.11.2015

ANNEXURE R3(h) : COPY OF THE ORDER NO.AC.F1/1/036199/2009 DATED 04.01.2010 APPROVED THE WORKLOAD AND STAFF STRENGTH OF VARIOUS DEPARTMENTS OF THE COLLEGE

ANNEXURE R3(i) : COPY OF THE STATEMENT SHOWING THE ACTUAL WORKLOAD, STAFF POSTITION AND VACANCIES EXISTING AS ON 04.01.2010

ANNEXURE R3(j) : COPY OF THE JUDGMENT DATED 5TH JULY, 2010 I WP(C). NO.18342/2010

ANNEXURE R3(k) : COPY OF THE SENIORITY LIST OF TEACHING STAFF IN THE MATHEMATICS DEPARTMENT AS ON 04.01.2010

ANNEXURE R3(l) : COPY OF THE SENIORITY LIST OF TEACHERS IN THE DEPARTMENT OF MATHEMATICS AFTER FILLING UP THE TWO POSTS (ONE EXISTING AND ONE RETIREMENT VACANCY)

ANNEXURE R3(m) : COPY OF THE SENIORITY LIST OF TEACHERS WORKING IN THE DEPARTMENT OF BOTANY AS ON 04.01.2010

ANNEXURE R3(n) : COPY OF THE SENIORITY LIST OF TEACHRS AS ON MARCH 2012 AFTER FILLING UP THE TWO POSTS (ONE EXISTING AND ONE RETIREMENT VACANCY)

/TRUE COPY

P.A TO JUDGE

VPV

P.N.RAVINDRAN, J.
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R.P.No.962 of 2013
in
W.P.(C)No.23229 of 2012
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Dated this the 4th day of December, 2015

ORDER

The prayer in this review petition is to review and recall the judgment delivered by me on 19.3.2013 in W.P.(C)No.23229 of 2012. By that judgment, I quashed Ext.P5 letter dated 24.9.2012 sent by the Deputy Director of Collegiate Education, Kollam to the Principal of Milad-E-Sherief Memorial College, Kayamkulam, objecting to the appointment of the writ petitioners and directed the respondents in the writ petition to draw and disburse salary and allowances to the writ petitioners with effect from the dates on which their appointments were approved by the University of Kerala.

2. The writ petitioners, two in number, were appointed as Assistant Professor in the Department of Mathematics and Assistant Professor in the Department of Botany respectively by appointment orders dated 3.10.2011 and 21.2.2012. In the appointment order of the first writ petitioner it is stated that his appointment is in the vacancy of Smt.Ashalatha. In the appointment order of the second writ petitioner it is stated that her appointment is in the vacancy of

Sri.P.Radhakrishnakurup. These appointments were admittedly approved by the University of Kerala by Ext.P3 order dated 2.6.2012 and Ext.P4 order dated 4.6.2012, with effect from 3.10.2011 and 21.02.2012 respectively. The contention now raised by the University of Kerala in the application for review is that the said retirement vacancies had been filled up when Sri.K.P.Sreekumar was appointed in the Department of Mathematics and Dr.Ushakumari was appointed in the Department of Botany. Reliance is placed on the service books of Sri.K.P.Sreekumar and Dr.Ushakumari in support of the said contention. It is also contended that as on the date on which the writ petitioners were appointed the permissible number of teachers, namely 8, were in place in the Department of Mathematics and 4 teachers were in place in the Department of Botany. It is contended that it was suppressing the fact that the retirement vacancies of Smt.Ashalatha and Sri.P. Radhakrishnakurup had already been filled up that the writ petitioners were appointed against the very same retirement vacancies and that this fact escaped the attention of the University. In short, the contention of the University of Kerala in this review petition is that fraud has been played on the University to obtain an order of approval.

3. The materials on record disclose that the University of Kerala had by order No.Ac.F1/1/036199/2009 dated 4.1.2010, which is

produced as Annexure-VIII along with the review petition, determined the number of teachers permissible in the Department of Botany as 5 and the number of teachers permissible in the Department of Mathematics as 9. On noticing this order, when this review petition came up before me on 15.10.2015, I passed the following order:

After hearing learned counsel appearing for the Kerala University I am of the considered opinion that the University should place on record along with an affidavit sworn to by the Registrar of University, a true copy of the appointment orders issued by the Manager of Milad-E-Sherief Memorial College, the first respondent in the writ petition, appointing Sri.K.P.Sreekumar in the Department of Mathematics and Dr.Ushakumari in the Department of Botany in the said college. Affidavit as directed above shall be filed within two weeks from today. The University shall along with the said affidavit also produce a copy of the order issued by it approving the aforesaid appointments.

Post in chambers at 1.30 p.m. on 2.11.2015. The Principal, Milad-E-Sherief Memorial College, the first respondent in the writ petition, shall on that day produce the original of the service books of the petitioners in the writ petition as also the service books of Sri.K.P.Sreekumar and Dr.Ushakumari. The Principal of the College shall on that day also file an affidavit setting out the names of all the teachers who were in place as on 3.10.2011 and 21.2.2012 respectively in the Department of Mathematics and in the Department of Botany. The Deputy Director of Collegiate Education shall file an affidavit setting out the names of teachers who were in place on the aforesaid dates in the Department of Mathematics and the Department of Botany in Milad-E-Sherief Memorial College, Kayamkulam.

4. By that order, I directed the University of Kerala to produce copies of the appointment orders issued by the management appointing Sri.K.P. Sreekumar in the Department of Mathematics and

Dr.Ushakumari in the Department of Botany. I also directed the University to produce a copy of the order issued by it approving the aforesaid appointments. Though the appointment orders of Sri.K.P. Sreekumar and Dr.Ushakumari are produced, the orders approving their appointments have not been produced. I had also directed the Principal of the college to file an affidavit setting out the names of teachers who were in place as on 3.10.2011 and 21.2.2012 respectively (the dates on which the writ petitioners were appointed) in the Department of Mathematics and in the Department of Botany. The Deputy Director of Collegiate Education was directed to file an affidavit setting out the names of teachers who were in place on the aforesaid dates in the Department of Mathematics and in the Department of Botany in Milad-E-Sherief Memorial College, Kayamkulam.

5. Pursuant to the said order, the Deputy Director of Collegiate Education, Kollam has filed an affidavit dated 19.11.2015. He has averred that in the Department of Mathematics, 8 teachers were working and in the Department of Botany, 4 teachers were working. They are:

"Mathematics

1. Sri.Manmadhan Pillai
2. Sri.A.Shajahan
3. Smt.B.Jayasree

4. *Sri.V.S.Unnikrishnan*
5. *Smt.P.A.Mariamamma*
6. *Smt.M.R.Padmakumari*
7. *Smt.Vijayalekshmi*
8. *Sri.K.P.Sreekumar*

Botany

1. *Smt.A.Rafeeka Beevi*
2. *Sri.H.Muhammed Hafeelu*
3. *Smt.Sheeja Purushothaman*
4. *Dr.Ushakumary"*

The list contains the names of Sri.K.P.Sreekumar and Dr.Ushakumari.

6. The Principal of the college has filed I.A.No.445 of 2015 and produced along with it as Ext.R3(k), a statement setting out the list of teachers who were in place as on the aforesaid dates. The said statement tallies with the statement filed by the Deputy Director of Collegiate Education. It is thus evident from the materials before me that as against the permissible number of teachers, namely 9, in the Department of Mathematics only 8 teachers including Sri.K.P. Sreekumar were in place as on the date on which the first writ petitioner namely Sri.Y.Renjithkumar was appointed by Ext.P2 appointment order dated 3.10.2011 and only 4 teachers including Dr.Ushakumari were in place when the second writ petitioner namely Smt.A.Shabnam was appointed in the Department of Botany as per Ext.P1 appointment order dated 21.2.2012. Going by the University order dated 4.1.2010 referred to earlier namely Annexure-VIII, the

aforesaid appointments are in order. Though the learned counsel appearing for the University of Kerala contended that notwithstanding that order, the Government should have sanctioned the posts recognised in Annexure-VIII, it did not take such a stand when it approved the appointments of Sri.K.P.Sreekumar and Dr.Ushakumari as also the appointments of the writ petitioners.

7. It is relevant in this context to note that notwithstanding the fact that this court had directed the University of Kerala to produce the orders approving the appointments of Sri.K.P.Sreekumar and Dr.Ushakumari, the said approval orders have not been produced. It is also relevant in this context to note that though Sri.K.P.Sreekumar and Dr.Ushakumari were appointed against then existing vacancies and it was stated in the appointment orders that their appointments are against existing vacancies and there was no statement to the effect that their appointments are against retirement vacancies, the University of Kerala had approved the appointment of Sri.K.P. Sreekumar in the retirement vacancy of Smt.Ashalatha. The same error was committed when the appointment of Dr.Ushakumari was approved. In the approval order issued by the University of Kerala it was stated that her appointment is approved against the retirement vacancy of Sri.P.Radhakrishnakurup. The said error was carried over to the service books of Sri.K.P.Sreekumar and Dr.Ushakumari. On

noticing this fact, the Principal of the college had sent a letter dated 29.8.2011 to the University (before the appointment of the writ petitioners) to correct the approval orders relating to Sri.K.P. Sreekumar and Dr.Ushakumari and to issue revised approval orders.

8. It is evident from the stand now taken by the University that it is relying on the aforesaid approval orders relating to Sri.K.P. Sreekumar and Dr.Ushakumari and the entries in their service books that it contends that the retirement vacancies against which the writ petitioners were appointed, had already been filled up. These facts are referred to in Annexure-IX letter dated 1.7.2013 sent by the Principal of the college to the Registrar of the University. There is no reply forthcoming from the side of the University as regards this aspect of the matter. That apart, it is evident from the materials furnished by the Principal of the college that the appointments were made strictly in accordance with the staff strength sanctioned as per Annexure-VIII order dated 4.1.2010. Nobody has a case that with the appointment of the writ petitioners, the strength sanctioned by the University as per Annexure-VIII order stood exceeded. In any case, no material is placed before me either by the Government or by the University to show that instead of 9 teachers in the Department of Mathematics and 5 teachers in the Department of Botany, as on the date on which the writ petitioners were appointed namely 3.10.2011 and 21.2.2012,

excluding the writ petitioners, there were 9 teachers in the Department of Mathematics and 5 teachers in the Department of Botany. The contention of the State and the University is that the sanctioned strength is 8 and 4 respectively in the two Departments. If the said stand is to be adopted, the University can only contend that the appointments were in excess of the sanctioned strength. That is not what is projected in the review petition. In the review petition what is projected is that the retirement vacancies against which the writ petitioners were appointed, had already been filled up and thereby, the sanctioned strength is exceeded. In my opinion, apart from mere assertions in the review petition there is nothing on record to show that the staff strength sanctioned as per Annexure-VIII University order, based on which the University granted approval, stood exceeded with the appointment of the writ petitioners.

9. Though the learned counsel appearing for the University contended that the Government will realise the salary paid to the teachers from the budgetary allocation to the University, I find no reason for the Government to take such a view. The Government are the pay master and under the impugned judgment, the liability to pay salary is on the Government. I therefore find no reason to review the impugned judgment on that ground also. Though it was contended that a Government order is required to sanction the posts, the said

contention cannot be accepted, having regard to the provisions contained in section 57 of the Kerala University Act as interpreted by the Honourable the Supreme Court in **State of Kerala v. Arun George** [2015 (1) KLT 833 (SC)]. Therefore, the University of Kerala or the State Government cannot seek a review of the impugned judgment on that score also.

I therefore find no good grounds to review the impugned judgment. The review petition is in my opinion without merit. It fails and is accordingly dismissed. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

vpv