

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No.884 of 2015 (I)

PETITIONER:

**DR.ANIAMMA MATHEW,CLINICAL PSYCHOLOGIST,
SCHOOL OF BEHAVIOURAL SCIENCES,
MAHATMA GANDHI UNIVERSITY,PRIYADARSHINI HILLS,
KOTTAYAM-686 560.**

**BY SRI.BABU VARGHESE (SENIOR ADVOCATE.)
ADVS.SRI.C.V.ALEXANDER
SRI.V.NARAYANA SWAMI**

RESPONDENTS:

- 1. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADARSHINI HILLS P.O,KOTTAYAM-686 560.**
- 2. THE SYNDICATE OF THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS CHAIRMAN,VICE CHANCELLOR,
PRIYADARSHINI HILLS P.O,KOTTAYAM-686 560.**
- 3. STATE OF KERALA,REPRESENTED BY THE
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

**R1-R2 BY SRI.P.JACOB VARGHESE (SENIOR ADVOCATE.)
SRI.VARUGHESE M.EASO,SC,M.G.UNIVERSITY
SRI.VIVEK VARGHESE P.J.,SC,M.G.UNIVERSITY
R3 BY SENIOR GOVT. PLEADER SRI.VIJULAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02.03.2015 ALONG WITH COC.125/2015, THE COURT
ON 12-03-2015, DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF THE APPOINTMENT ORDER DATED 9.5.94.

**EXHIBIT P2:TRUE COPY OF THE MA DEGREE CERTIFICATE IN PSYCHOLOGY
ISSUED BY THE CALICUT UNIVERSITY.**

**EXHIBIT P2(a):TRUE COPY OF THE RANK CERTIFICATE ISSUED BY THE CALICUT
UNIVERSITY.**

**EXHIBIT P3:TRUE COPY OF THE M.PHIL DEGREE CERTIFICATE ISSUED BY THE
BANGALORE UNIVERSITY.**

**EXHIBIT P4:TRUE COPY OF THE PHD DEGREE CERTIFICATE ISSUED BY THE
CALICUT UNIVERSITY.**

**EXHIBIT P5:TRUE COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE
NIMHANS,BANGALORE.**

**EXHIBIT P5(a):TRUE COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE
NIMH,SECUNDERABAD.**

**EXHIBIT P6:TRUE COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE
PROFESSOR AND HEAD, DEPARTMENT OF PSYCHIATRY
GOVERNMENT MEDICAL COLLEGE, KOTTAYAM, UNDER THE
DIRECTORATE OF MEDICAL EDUCATION, KERALA.**

**EXHIBIT P7:TRUE COPY OF THE LETTER OF REFERENCE DATED 25.1.11 ISSUED
BY THE DIRECTORAL GENERAL, DEPARTMENT OF RESEARCH AND
HRD, MINISTRY OF HEALTH, STATE OF ERITREA.**

**EXHIBIT P8:TRUE COPY OF THE TIMETABLE FOR THE PERIOD JUNE, 2011 TO
NOVEMBER 2011.**

**EXHIBIT P8(a):TRUE COPY OF TIMETABLE FOR THE PERIOD DECEMBER 2011 TO
APRIL 2012.**

**EXHIBIT P9:TRUE COPY OF THE COMMUNICATION DATED 19.8.11 ISSUED BY
THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.**

**EXHIBIT P9(a):TRUE COPY OF THE COMMUNICATION DATED 22.8.11 ISSUED BY
THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.**

**EXHIBIT P9(b):TRUE COPY OF THE COMMUNICATION DATED 13.12.11 ISSUED BY
THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.**

**EXHIBIT P9(c):TRUE COPY OF THE COMMUNICATION DATED 11.1.12 ISSUED BY
THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.**

**EXHIBIT P9(d):TRUE COPY OF THE COMMUNICATION DATED 13.4.12 ISSUED BY
THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.**

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EXHIBIT P9(e):TRUE COPY OF THE COMMUNICATION DATED 26.4.12 ISSUED BY THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.

EXHIBIT P9(f):TRUE COPY OF THE COMMUNICATION DATED NIL ISSUED BY THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.

EXHIBIT P9(g):TRUE COPY OF THE CERTIFICATE DATED 8.4.14 ISSUED BY THE DIRECTOR, SCHOOL OF BEHAVIOURAL SCIENCES.

EXHIBIT P9(h):TRUE COPY OF THE LETTER OF REFERENCE DATED 12.03.03 ISSUED BY THE DR.CYRIAC THOMAS, VICE CHANCELLOR, M.G UNIVERSITY.

EXHIBIT P10:TRUE COPY OF THE REPRESENTATION DATED 11.05.11 SUBMITTED BY THE PETITIONER TO THE SECOND RESPONDENT.

EXHIBIT P11:TRUE COPY OF THE PROCEEDINGS DATED 19.01.97 ISSUED BY THE DIRECTOR OF MEDICAL EDUCATION.

EXHIBIT P12:TRUE COPY OF THE PROCEEDINGS OF THE ACADEMIC EXPERTS COMMITTEE DATED 1.03.12.

EXHIBIT P13:TRUE COPY OF THE LETTER DATED 27.08.12 SENT TO THE THIRD RESPONDENT BY THE FIRST RESPONDENT.

EXHIBIT P14:TRUE COPY OF THE LETTER DATED 11.10.12 SENT BY THE THIRD RESPONDENT TO THE FIRST RESPONDENT.

EXHIBIT P15:TRUE COPY OF THE REPLY DATED 26.02.13 SENT BY THE FIRST RESPONDENT TO THE THIRD RESPONDENT.

EXHIBIT P16:TRUE COPY OF THE LETTER DATED 11.11.13 SENT BY THE THIRD RESPONDENT TO THE FIRST RESPONDENT.

EXHIBIT P17:TRUE COPY OF THE UNIVERSITY ORDER DATED 18.02.05 ACCORDING SANCTION TO CONVERT THE POST OF PROJECT OFFICER TO LECTURER IN THE SCHOOL OF GANDHIAN THOUGHT AND DEVELOPMENT STUDIES.

EXHIBIT P17(a):TRUE COPY OF THE UNIVERSITY ORDER ACCORDING SANCTION FOR APPOINTMENT OF DR.ROY C.MATHEW AS LECTURER IN THE SCHOOL OF GANDHIAN THOUGHT AND DEVELOPMENT STUDIES.

EXHIBIT P17(b):TRUE COPY OF THE LETER DATED 5.3.14 OF THE PUBLIC INFORMATION OFFICER UNDER RIGHT TO INFORMATION ACT.

EXHIBIT P18:TRUE COPY OF THE LETTER NO.AUDIT 11/2013-14, DATED 5.11.13 FROM THE FINANCE OFFICER OF THE IST RESPONDENT UNIVERSITY TO THE PETITIONER.

EXHIBIT P19:TRUE COPY OF THE REPRESENTATION DATED 19.11.14 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

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**EXHIBIT P20:TRUE COPY OF THE NOTE TO THE SYNDICATE IN THE MATTER
ALONG WITH RECEOMMENDATION OF THE STANDING
COMMITTEE.**

EXHIBIT P21:TRUE COPY OF THE JUDGMENT DATED 27.11.14 IN WPC 15170/14.

**EXHIBIT P22:TRUE COPY OF THE UNIVERSITY ORDER NO.6045/ALL(4)
2014/ADMN.DATED 28.11.14.**

**EXHIBIT P23:TRUE COPY OF THE ORDER DATED 11.12.14 IN IA NO.16943/2014 IN
WPC 15170/14.**

EXHIBIT P24:TRUE COPY OF THE PROTEST NOTE DATED 23.12.14.

EXHIBIT P25:TRUE COPY OF THE ARGUMENT NOTES DATED 23.12.14.

**EXHIBIT P26:TRUE COPY OF THE UNIVERSITY ORDER NO.6597/ALL(3)/
2014/ADMN.DATED 30.12.14.**

**EXHIBIT P26(a):TRUE COPY OF THE PROCEEDINGS OF THE HEARING
DATED 23.12.14 ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P27:TRUE COPY OF THE APPLICATION DATED 5.1.2015 UNDER THE
RIGHT TO INFORMATION ACT.**

**EXHIBIT P27(a):TRUE COPY OF THE APPLICATION DATED 5.1.2015 AND REPLY
THERETO DATED 30.1.2015 RECEIVED UNDER THE RIGHT TO
INFORMATION ACT.**

**EXHIBIT P28:TRUE COPY OF THE G.O(RT) NO.4557/2010/H & FWD
DATED 22.11.2010.**

RESPONDENT'S EXHIBITS:

**EXHIBIT R1(a):TRUE COPY OF LETTER NO.H2/2071/97/DME DATED 8.1.2001
ISSUED BY THE DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.**

**EXHIBIT R1(b):TRUE COPY OF IA NO.16943/2014 IN WP(C) 15170/14
DATED 9.12.2014 OF THIS HONOURABLE COURT.**

**EXHIBIT R1(c):TRUE COPY OF THE REPORT FROM THE DIRECTOR OF SCHOOL
OF BEHAVIOURAL SCIENCES DATED 31.12.2014
M.G.UNIVERSITY,KOTTAYAM.**

A.MUHAMED MUSTAQUE, J.

**W.P.(C) No.884 OF 2015 &
C.O.C. No.125 of 2015**

Dated this the 12th day of March, 2015

JUDGMENT

The petitioner has been appointed as a Clinical Psychologist in the School of Behavioural Sciences under the Mahatma Gandhi University, as per Ext.P1. The issue now pertains to retirement age treating the petitioner's post as a non-teaching post and also challenge is regarding the decision of the Government not to upgrade the post of Clinical Psychologist as that of Assistant Professor in Clinical Psychology. If the post is converted as Assistant Professor in Clinical Psychology, the petitioner will have to retire only at the age of 60.

2. The respondent-University, by Ext.P12 proceedings, resolved to recommend the petitioner as Assistant Professor in Clinical Psychology on the basis of the Expert Committee's assessment. The Registrar of the University, by Ext.P13,

requested the Government to accord sanction to upgrade the post of Clinical Psychologist to that of Assistant Professor in Clinical Psychology so as to place the petitioner as a faculty in the School of Behavioural Sciences. In that communication it is referred that, as a Clinical Psychologist under the Directorate of Medical Education, the petitioner undertook teaching assignments and supervised research. It is pointed out the Clinical Psychologists working under the Directorate of Medical Education in Kerala are promoted to the teaching position as and when vacancy arises. By Ext.P14, the Government sought certain clarifications from the Registrar of the University whether the post of Clinical Psychologist is a feeder category for appointment of Lecturer in Clinical Psychology in the school and also whether the post Clinical Psychologist is necessary for the functioning of the school. The Registrar, as per Ext.P15, clarified that the Clinical Psychologist, who heads the clinical/practical laboratory, is serving as a faculty while taking the role of a clinician and, therefore, it is appropriate to convert the post of Clinical Psychologist as a clinical faculty. However, the Government, by Ext.P16, rejected the Registrar's clarification stating that there is no

special circumstance for upgrading the post of Clinical Psychologist in School of Behavioural Sciences in order to place the incumbent in the UGC pattern.

3. The petitioner had approached this Court by filing W.P. (C) No.15170/2014 for re-designation of non teaching post as a teaching post. This Court directed the University to consider Ext.P19 representation in that writ petition and to pass appropriate orders. The University vide order dated 23/12/2012 considered the petitioner's request and rejected the same. This writ petition challenges the above order of the Vice Chancellor. That order is produced as Ext.P26 & 26(a).

4. The petitioner also has certain other claims before the Vice Chancellor to accommodate her against the post of Assistant Professor held by M.X.James who, according to the petitioner, has resigned from the post.

5. In the circumstances of rejection of the petitioner's request for re-designation in Ext.P26(a), it is necessary to advert to the above order issued by the Vice Chancellor. The petitioner had pointed out that the University had accorded sanction to one Dr.Roy Mathew, as per Ext.P16, converting the post of Project Officer as a Lecturer in the School of

Gandhian Thought and Development Studies. While repelling the petitioner's claim, it is noted by the Vice Chancellor that Dr.Roy Mathew's case was considered based on his qualifications as well as eligibility criteria prescribed by the UGC for the selection of Project Officer in the specific case. It is also found by the Vice Chancellor that the Selection Committee, earlier recommended for upgradation of the petitioner, was not constituted as prescribed in the Statutes- Chapter 3 of the Mahathma Gandhi University Statutes 1997 or as per the UGC Regulations 2010.

6. In regard to the petitioner's claim for upgradation, it was noted by the Vice Chancellor that the Government's concurrence is necessary and the claim for appointment of the petitioner in the vacancy occurred on account of resignation of M.X.James also turned down by the University. Accordingly, the University declined the petitioner's claim for continuation in the post till the age of 60 years.

7. The petitioner, as a matter of right, cannot claim upgradation of the post. The Government declined the claim for the upgradation. This Court cannot direct the Government to upgrade the post to suit the need of the petitioner. The

Government as well as the University, by exercising their power, declined the request of the petitioner for upgradation to the post of Assistant Professor. In that view of the matter I am of the view that the issue of upgradation is concluded against the petitioner and the petitioner is bound by the decision of the Government as well as the University declining the upgradation.

8. The petitioner's claim for making appointment in the vacancy of M.X. James also cannot be acceded. If substantial vacancy arises in the University, the University cannot bypass such vacancy without notifying the same in the open market. However, considering the nature of the request made by the University for upgradation, there will be a serious issue in this matter, for re-designation to treat the post held by the petitioner as teaching post. The Vice Chancellor, by Ext.P26 (a), declined re-designation for the simple reason that earlier selection committee was not properly constituted. The assumption, that the earlier selection committee was not properly constituted, does not mean that the claim of re-designation has to be denied for that reason. There are sufficient materials on record, as referred in the various

communications issued by the Registrar to the Government, that the petitioner is discharging the duties as that of a faculty member in teaching.

9. The word "teacher" is defined under Section 3(29) of the Mahatma Gandhi University Act as follows:

(29)"Teacher" means a Principal, Professor Associate Professor, assistant professor, reader, lecturer instructor,or such other person imparting instruction or supervising the research in any of the colleges or recognised institutions and whose appointment has been approved by the University.

Under Section 3 (30)," teacher of the University" is defined as follows:

"(30) "Teacher of the University" means a person employed as teacher in any institution maintained by the University."

10. The Vice Chancellor cannot now deny the fact that there was recommendation by the University in the earlier occasion before the Government for upgradation. Redesignation and upgradation are two different concepts. This Court is also of the view that, in the matter of

upgradation, the decision of the Government and the University need not be interfered. But, the facts and circumstances points out that the petitioner has been appointed as a Clinical Psychologist and discharging the duties as a faculty member by giving instructions to students, practical training of the M.Sc. M Phil and Ph.D. Students, as seen from Ext.P15. Any engagement of a person with a view to impart instructions to students has to be taken as discharging the duty of teacher. The substantial and functional duties of such an employee has to be taken into account while deciding whether it has to be treated as a teaching or non teaching. If the substantial and functional duties are that of a teacher by imparting instruction, supervising, etc., necessarily such a person by, whatever his designation, engaged by the University, would fall in the definition of 'teacher'. The re-designation, therefore, has to be in regard to the functional duties discharged by an employee and not by the nomenclature of the post. The Vice Chancellor omitted to note the functional duties attached to the Clinical Psychologist. As, has been noted as above, particularly in the light Ext.P15, I am of the view that the

matter requires reconsideration at the hands of the Vice Chancellor to the extent of re-designating the post of Clinical Psychologist as a teaching faculty. The Vice Chancellor shall advert to Ext.P15 and duties attached to the post of Clinical Psychologist in the faculty. It is open for the petitioner to give details of the duties discharged by her by separate representation along with this judgment. If it is found that the petitioner's substantial work is that of imparting instructions, necessarily the post of the petitioner shall be re-designated. The decision shall be taken within a period of six weeks from the date of receipt of a copy of this judgment, after affording an opportunity of hearing to the petitioner. Till the decision is taken in the matter, the petitioner shall be permitted to continue in the post based on the interim order passed by this Court. However, if the decision to be taken by the Vice Chancellor is adverse to the claim of the petitioner, the petitioner shall not be relieved based on such decision, for a further period of two weeks after communicating the order, in order to enable the petitioner to work out her alternative remedy.

The writ petition is disposed of with the above directions.

No costs.

C.O.C. No.125/2015:

It is admitted now that the petitioner has been permitted to attend the college as directed by this court in the above writ petition. Without making further probe into the alleged contumacious act, this Contempt Case is closed .

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ PS to Judge.

aThe issue now pertains to a retirement age treating the petitioner's post as a non-teaching post and also challenge is

regarding the decision of the Government not to upgrade the post of Clinical Psychologist as that of Assistant Professor in Clinical Psychology. If the post is converted as Assistant Professor in Clinical Psychology, the petitioner will have to retire only at the age of 60.

11. The respondent-University, by Ext.P12 proceedings, resort to recommend the petitioner as Assistant Professor in Clinical Psychology on the basis of the Expert Committee's assessment. The Registrar of the University, by Ext.P13, requested the Government to accord the sanction to upgrade the post of Clinical Psychologist to that of Assistant Professor in Clinical Psychology so as to place the petitioner as a faculty in the School of Behavioural Sciences. In that communication it is referred that, as a Clinical Psychologist under the Directorate of Medical Education, the petitioner undertook teaching assignments and supervised research. It is pointed out that Clinical Psychologist working under the Directorate of Medical Education in Kerala are promoted to the teaching position as and when vacancy arises. By Ext.P14, the Government sought certain clarification from the Registrar whether the post of Clinical Psychologist is a feeder category

for appointment of Lecturer in Clinical Psychology in the school and also whether the post Clinical Psychologist is necessary for the functioning of the school. The Registrar, as per Ext.P15, clarified that the Clinical Psychologist, who heads the clinical/practical laboratory, is serving as a faculty while taking the role of a clinician and, therefore, it is appropriate to convert this post of Clinical Psychologist as a clinical faculty. However, the Government by Ext.P16 rejected the Registrar's clarification stating that there is no special circumstances for upgrading the post of Clinical Psychologist in School of Behavioural Science in order to place the incumbent in the UGC pattern.

The petitioner had approached this Court by filing W.P. (C) No.15170/2014 for re-designation of non teaching post as a teaching post. In that writ petition, this directed the University to consider Ext.P19 representation in that writ petition and to pass appropriate orders. The University vide order dated 23/12/2012 considered the petitioner's request. This writ petition challenges the above order of the Vice Chancellor.

The petitioner also has certain other claim before the Vice

Chancellor to accommodate him against the post of Assistant Professor held by M.X.James who, according to the petitioner, have resigned from the post.

In the circumstances of rejection of re-designation in Ext.P26, it is necessary to advert to the above order issued by the Vice Chancellor. The petitioner had pointed out that the University had accorded sanction to one Dr.Roy.C.Mathew as per Ext.P17 converting the post of Project Officer as a Lecturer in the School of Gandhian Thought and Development Studies . While repelling the petitioner's claim, it is noted that Dr.Roy Mathew's case was considered based on his qualifications or eligibility criteria prescribed by the UGC for the selection of the Project Officer in the specific case. It is also found by the Vice Chancellor that the Selection Committee earlier recommended the petitioner for upgradation was not constituted as per Chapter 3 of the Mahatma Gandhi University Statute or as per the UGC Regulations.

In regard to the claim for upgradation, it was noted by the Vice Chancellor that the Government's concurrence is necessary and the claim for appointment of the petitioner in the vacancy occurred on account of resignation of MX James

also turned down by the University. Accordingly, the University declined the petitioner's claim for continuation of the age of retirement.

The petitioner, as a matter of right, cannot claim upgradation of the post. The Government declined the upgradation. This Court cannot direct the Government to upgrade the post to suit the age of the petitioner. The Government as well as the University, by exercising their power, declining the request of the petitioner for upgradation of the petitioner as Assistant Professor. In that view of the matter, I am of the view that the issue of upgradation is concluded against the petitioner and the petitioner is bound by the decision of the Government as well as the University declining upgradation.

The petitioner's claim for making appointment in the vacancy of M.X.James also cannot be acceded. If substantial vacancy arises in the University, the University cannot bypass such vacancy without notifying the post in the open market. However, considering the nature of the request made by the University for upgradation, there will be a serious issue in this matter, if the post held by the University is to be treated as

teaching post. Vice Chancellor by Ext.P23 declined re-designation for the simple reason that earlier selection committee was not properly constituted. Assuming that the earlier selection committee was not properly constituted that does not mean that the claim of re-designation has to be denied for that reason. There are sufficient materials on record, as referred in the various communication issued by the Registrar to the Government, that the petitioner is discharging duties that of a faculty member in teaching.

The teacher is defined under Section 3 (29) of the Mahatma Gandhi University Act as follows”

The teacher means a Principal, Professor or Associate Professor and the Assistant Professor, reader, Lecturer in ...or such other person imparting instructions or supervising research in any of the colleges or recognised institution and whose appointment has been approved by the University under Section 3 (30)

