

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 2437 of 2015 (D)

PETITIONER:

**APARNA RAJ, ASST. PROFESSOR,
DEPARTMENT OF PHYSICS, K.E.COLLEGE,
MANNANAM, KOTTAYAM, PIN - 686 561.**

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

RESPONDENT(S):

- 1. THE MANAGER, K.E.COLLEGE,
MANANAM, KOTTAYAM, PIN - 686 561.**
- 2. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADHARSHINI HILLS,
ATHIRAMPUZHAM KOTTAYAM - 686 505.**
- 3. STATE OF KERALA, REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 4. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033.**
- 5. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOTTAYAM - 686 001.**

**R2 BY SRI.VARUGHESE M.EASO, SC
R3 TO R5 BY SENIOR GOVERNMENT PLEADER SRI.M.A.FAYAZ**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE STATEMENT OF MARKS FOR THE ICSE EXAMINATION.
- EXT. P1(A) : TRUE COPY OF THE DEGREE CERTIFICATE AWARDED BY THE CHRIST UNIVERSITY.
- EXT. P1(B) : TRUE COPY OF THE EQUIVALENCY CERTIFICATE ISSUED BY THE 2ND RESPONDENT UNIVERSITY.
- EXHIBIT P2 : TRUE COPY OF THE LETTER NO.17-06/2012(I)EU-B DATED 21.11.2012 ISSUED BY THE CSIR ON CSIR-UGC TEST FOR LECTURSHIP.
- EXHIBIT P3 : TRUE COPY OF THE NOTIFICATION WHICH APPEARED IN THE HINDU DAILY DATED 25.4.2013.
- EXHIBIT P4 : TRUE COPY OF THE GOVERNMENT LETTER NO.15674/D2/13/H.EDN DATED 3.6.2013.
- EXT. P4(A) : TRUE COPY OF THE UNIVERSITY ORDER NO.3047/BII/2/2013/ACAD. DATED 1.6.2013.
- EXHIBIT P5 : TRUE COPY OF THE MINUTES OF THE MEETING OF THE STAFF SELECTION COMMITTEE IN PHYSICS HELD ON 6TH JULY, 2013.
- EXHIBIT P6 : TRUE COPY OF THE APPOINTMENT ORDER NO.379/13 12.7.2013.
- EXT. P6(A) : TRUE COPY OF THE JOINING REPORT OF THE PETITIONER.
- EXHIBIT P7 : TRUE COPY OF THE FORWARDING LETTER DATED 6.9.2013 SUBMITTING PROPOSAL FOR APPROVAL OF APPOINTMENT OF THE PETITIONER.
- EXHIBIT P8 : TRUE COPY OF THE LETTER NO.AC.BII/7209/2/2013 DATED 3.9.2014.
- EXHIBIT P9 : TRUE COPY OF THE LETTER DATED 18.9.2014 ADDRESSED TO THE 2ND RESPONDENT UNIVERSITY.
- EXHIBIT P10 : TRUE COPY OF THE STAFF FIXATION ORDER DATED 23.3.2012.
- EXT. P10(A) : TRUE COPY OF THE LIST OF TEACHERS WORKING IN THE DEPARTMENT OF PHYSICS OF THE COLLEGE ON 12.7.2013.
- EXT. P10(B) : TRUE COPY OF THE WORKLOAD STATEMENT OF THE DEPARTMENT PHYSICS.
- EXHIBIT P11 : TRUE COPY OF THE LIST OF ALL TEACHERS APPOINTED THE COLLEGE SINCE 1.9.1972.

RESPONDENT'S EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.2437 of 2015

Dated this the 19th day of March, 2015

JUDGMENT

The petitioner was appointed in the post of Assistant Professor in Physics pursuant to a notification issued by the College concerned. The selection committee consists of Government nominee, subject expert and other Officials as mandated under the relevant regulations of the Mahatma Gandhi University Act. This appointment was with effect from 12.7.2013.

2. The College made a statement of workload as on 1.11.2012 based on the students strength of the previous year. This workload would clearly indicate that the total workload is 139 hours and number of posts admissible is nine. The petitioner is appointed in 9th post. The workload statement is produced as Ext.P10(b). The University did not

approve the appointment. Thus, the petitioner has approached this Court.

3. The stand of the University is that they did not verify the workload submitted by the College as per Ext.P10(b). The case of the University is that based on the Government Order dated 18.12.2012, the staff fixation as well as the workload has to be fixed by the Government and therefore, the University is not in a position to approve the appointment.

4. The learned Standing Counsel submits that the Government Order is remain unchallenged before this Court and therefore, the University is not bound to approve the appointment.

5. The approval of appointment is governed by the University Act and the Statutes. Section 23 of Mahatma Gandhi University Act refers the power of the Syndicate, which includes the power to approve the appointment of teachers in

private colleges. Statute 16 of Chapter 45 of the Mahatma Gandhi University Statutes, 1997 (for short, the 'University Statutes') also covers provisions for approval of appointment.

6. Statute 16 of the University Statutes, which reads as follows:

“16. Approval of appointment:

(1) Approval of every appointment to the teaching post shall be made by the Syndicate subject to the conditions that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post.

(2) The Deputy Director of Collegiate Education concerned shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. Doubtful cases shall be referred to the University for clarification and the correctness of direct payment ensured.

(3) In the case of those private colleges coming under the Direct payment Scheme, the Director of Collegiate Education or the Officer authorised by him in this behalf shall verify in consultation with the University as to whether the teaching post in private colleges are in excess of the posts sanctioned by the University. However, in the case of incumbents declared as supernumeraries by the University, the controlling officers shall ensure that no fresh appointment is made against future vacancies until all the supernumeraries are absorbed against those vacancies. The direct payment of salaries shall not be made to the person appointed against fresh vacancies, before the absorption of supernumeraries.”

Statute 16 of the University Statutes would go to show that the University has bounden duty to fix the staff pattern and verify the qualification for the post.

7. The power referable to the Government is through

the Deputy Director of Collegiate Education is only to verify whether the approval of appointment of the staff pattern and the workload fixed by the University is correct or not. When statutory provisions are clear and abundant showing the duties and responsibilities of the University, a Government Order cannot divest such statutory power of the University. The Government Order can only be read down to understand that it was issued in order to avoid further issue and delay in the matter of payment of salary, the staff fixation could be verified by the Additional Secretary to the Government. But that does not take away the power of the University. Any constitution of Apex Committee consists of the Principal Secretary or such other member would not take away the University's power to fix the staff fixation and approve the appointment in accordance with law. The University cannot take shelter under the Government Order to claim that the

Government is the authority to fix the staff fixation and the workload in the College.

8. I am of the view, notwithstanding the Government Order as above, the University is bound to undertake their statutory obligations in terms of Statute 16 read with Section 23 of the Mahatma Gandhi University Act. In view of the long delay involved in the matter and taking note of workload statement, the petitioner shall be approved forthwith provisionally. There is no dispute regarding qualification of the petitioner.

Therefore, the writ petition is disposed of with the following orders:

1. In view of the matter that the appointment was made as early as in the year 2012, the University shall approve the appointment of the petitioner provisionally based on the statement given by the College as per Ext.P10(b).

2. It is open for the University to verify the statement and find out any discrepancy and the University shall make every endeavour to fix the staff fixation in accordance with the relevant provisions of law.
3. While working out the actual workload in the College, the relevant syllabus that applicable shall also be taken note by the University for staff fixation.
4. The petitioner shall be paid current month salary onwards.
5. The payment of salary will be subject to outcome of enquiry and verification in relation to the workload.
6. The enquiry and verification as mentioned above shall be completed within three months.
7. On verification, it is find that the petitioner is

appointed to admissible post, entire arrears of salary shall be paid to the petitioner within three months thereafter.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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