

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 7579 of 2012 (V)

PETITIONER(S):

**DR.T.K.NARAYANAN,
PROFESSOR IN SANSKRIT
UNIVERSITY OF CALICUT P.O. THENHIPALAM
MALAPPURAM-673 636.**

**BY ADVS.SRI.N.SUGATHAN
SMT.M.C.BINDUMOL
SRI.S.PRASANTH (AYYAPPANKAVU)
SMT.VARSHA BHASKAR**

RESPONDENT(S):

**1. UNIVERSITY OF CALICUT,
REPRESENTED BY THE REGISTRAR, P.O., THENHIPALAM
MALAPPURAM-676636.**

**2. SYNDICATE OF THE UNIVERSITY OF CALICUT,
REPRESENTED BY THE VICE-CHANCELLOR, P.O. THENHIPALAM
MALAPPURAM-673636.**

R1 & 2 BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUTY UNIVERS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

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|----------------|---|
| EXT.P1 | TRUE COPY OF NOTIFICATION DATED 16-10-1987 ISSUED BY THE UNIVERSITY OF CALICUT. |
| EXT.P2 | TRUE COPY OF ORDER DATED 8-11-1990 ISSUED BY THE CHANCELLOR OF THE UNIVERSITY. |
| EXT.P3 | TRUE COPY OF NOTIFICATION DATED 24-12-1997 ISSUED BY THE UNIVERSITY. |
| EXT.P4 | TRUE COPY OF ORDER NO. G.A.II/C2/2632/98 DATED 14-10-1998 ISSUED BY THE UNIVERSITY. |
| EXT.P5 | TRUE COPY OF ORDER DATED 22-12-1999 ISSUED BY THE UNIVERSITY. |
| EXT.P6 | TRUE COPY OF JUDGMENT DATED 24-11-2009 IN OP. NO. 24633/1998. |
| EXT.P7 | TRUE COPY OF ORDER NO. GS3-2910/2009 DATED 19-2-2010 ISSUED BY THE CHANCELLOR OF THE UNIVERSITY. |
| EXT.P8 | TRUE COPY OF COUNTER AFFIDAVIT IN WPC NO. 12787/2010 FILED BY THE UNIVERSITY. |
| EXT.P9 | TRUE COPY OF JUDGMENT DATED 29-10-2010 IN WPC NO. 12787/2010. |
| EXT.P10 | TRUE COPY OF JUDGMENT DATED 10-1-2011 IN W.A. NO. 1971/2010. |
| EXT.P11 | TRUE COPY OF JUDGMENT DATED 24-1-2012 IN W.A. NO. 504/2010. |
| EXT.P12 | TRUE COPY OF NEWS ITEM APPEARED IN CHANDRIKA DAILY DATED 30-1-2012. |
| EXT.P13 | TRUE COPY OF NEWS ITEM APPEARED IN MALAYALA MANORAMA DAILY DATED 30-1-2012. |
| EXT.P14 | TRUE COPY OF CONFERRED MINUTES OF THE MEETING OF THE SYNDICATE HELD ON 9-3-2012. |

WP(C).No. 7579 of 2012 (V)

- EXT.P15 TRUE COPY OF ORDER NO. GAI/C2/819/2010 DATED 14-3-2012
ISSUED BY THE UNIVERSITY.
- EXT.P16 TRUE COPY OF ORDER DATED 16-6-1999 ISSUED BY THE
UNIVERSITY.
- EXT.P17 TRUE COPY OF ORDER DATED 6-8-2009 ISSUED BY THE
UNIVERSITY.
- EXT.P16 COPY OF MEMO DTD. 16.5.12 ISSUED BY THE FINANCE OFFICER
OF THE UNIVERSITY TO THE PETITIONER (PRODUCED ALONG
WITH I.A NO.13333/2015)
- EXT.P17 COPY OF EXPLANATION DTD. 21.5.12 SUBMITTED BY THE
PETITIONER TO THE FINANCE OFFICER OF THE UNIVERSITY
(PRODUCED ALONG WITH I.A NO.13333/2015)
- EXT.P18 COPY OF REPRESENTATION DTD. 14.6.12 SUBMITTED BY THE
PETITIONER TO THE FINANCE OFFICER OF THE UNIVERSITY
- EXT.P19 COPY OF ORDER NO.AD.H1/PEN./4456/2012 DTD. 3.10/12 OF THE
UNIVERSITY.

RESPONDENTS' EXHIBITS

- ANNEXURE R1(1) COPY OF THE LETTER ISSUED BY JOINT DIRECTOR, LOCAL
FUND AUDIT TO THE REGISTRAR OF THE UNIVERSITY.
- EXT.R1(1) COPY OF THE UNIVERSITY FIN.CC II/PEN/7525/07/SF DTD.
11.1.13.
- EXT.R1(2) COPY OF THE REPLY GIVEN BY THE PETITIONER ON 14.1.13.

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.7579 of 2012 - V

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Dated this the 16th day of November, 2015

J U D G M E N T

The entire controversy revolves around the shifting stance taken by the University, at various points. The University blames the petitioner, who is said to have been in charge as the Registrar of the University, for the earlier stand taken by the University before this Court.

2. The facts in detail are to be noticed. The controversy has its genesis, with the University notifying the post of Professor in Sanskrit on 18.04.1986. Both the petitioner and one Dr.B.Karunakaran applied. They were already the teaching faculty of the affiliated colleges of different Universities; the petitioner in the respondent University itself and Dr.B.Karunakaran in one another University. The selection was not completed and Dr.B.Karunakaran was before this Court with

a writ petition, which was dismissed. Again, the University notified a fresh selection by Ext.P1, dated 16.10.1987 for direct recruitment of Professor. It was specifically indicated in Ext.P1, with respect to the post of Professor in Sanskrit, that it was a re-notification, reserved for OBC (Ezhava/Thiyya/Bhillava).

3. The eligibility for appointment as Professor as is indicated in Ext.P1 itself was a first class Master's Degree or a second class Master's Degree with not less than 50% marks of an Indian University or an equivalent qualification, a doctorate degree and published research work of a high standard and 10 years experience in guiding research. Again Dr.B.Karunakaran and the petitioner applied under the said notification.

4. There was an allegation that Dr.B.Karunakaran did not have research experience, the Syndicate in any event found that the Selection Committee was not constituted properly and declined the approval for appointment of Dr.B.Karunakaran, by a decision dated 19.08.1989.

Dr.B.Karunakaran filed a representation before the Chancellor of the University and the same was decided by Ext.P2 dated 08.11.1990.

5. The specific contention of Dr.B.Karunakaran in the representation was that the petitioner herein, a member of the Syndicate exerted influence on the other members of the Syndicate; which alone resulted in the rejection of the recommendation of the properly constituted Selection Committee. The fact that the petitioner actively participated in a meeting of the Syndicate, which considered the approval of a rival candidate was referred to. The Chancellor found that the rejection of the recommendation of the Selection Committee on the ground that two of the experts in the Committee were not qualified, was unsustainable. Hence, exercising the powers conferred on the Chancellor, under sub-section (3) of Section 7 of the Calicut University First Statutes 1977, the decision of the Syndicate of the University taken under item No.89.309 dated 19.08.1989 was annulled. It was also held that it would be

open for the Syndicate to re-consider the matter afresh and take appropriate decisions.

6. The petitioner herein filed an original petition numbered as O.P. No.11229 of 1990, challenging the order of the Chancellor at Ext.P2. While the matter was pending, the post was again re-notified as per Ext.P3 notification dated 24.12.1997. Dr.B.Karunakaran did not apply under Ext.P3 notification but challenged the same by O.P.No.24633 of 1998. The petitioner applied and he was selected. The petitioner was appointed as per Ext.P4, on 14.10.1998, as a Professor, subject to the final decision in O.P. No.11229 of 1990. The petitioner's probation in the post of Professor was also satisfactorily completed and he was confirmed by Ext.P5 order. O.P. No.11229 of 1990 as was noticed earlier was filed by the petitioner himself challenging the earlier, order of the Chancellor. The petitioner having been granted appointment, the petitioner withdrew the same and the original petition was dismissed as not pressed.

7. All this while, the writ petition filed by Dr.B.Karunakaran as O.P. No.24633 of 1998 was pending before this Court. The above writ petition was filed challenging the fresh notification issued on 24.12.1997 and challenging the appointment of the petitioner, who was the 5th respondent in the above writ petition. The writ petition itself was disposed of by Ext.P6. The University had not filed a counter affidavit in the matter. Accepting the averments of Dr.B.Karunakaran, this Court found that the constitution of the Selection Committee, which recommended the petitioner for appointment was valid. Though the learned Single Judge, who disposed of the original petition found that the petitioner is entitled to the reliefs prayed for, the Court took note of the fact that the petitioner having passed the age of superannuation, the reliefs could not be granted.

8. The question hence posed by the Court to itself, was as to the notional benefits to be given to the petitioner therein, Dr.B.Karunakaran. The 2nd respondent, Chancellor was

directed to consider the question of such notional benefits, for reason of he having been illegally denied the benefit of a selection made by a properly constituted Selection Committee. The original petition was disposed of with a direction to the Chancellor to consider the reliefs to be given to the petitioner, on the basis of the selection. Orders were directed to be passed by the 2nd respondent Chancellor within two months. It is to be specifically noticed that despite Dr.B.Karunakaran having challenged the appointment of the petitioner, this Court did not set that aside, nor was any interference caused to the fresh notification made.

9. In compliance with the directions at Ext.P6, the Chancellor passed Ext.P7 order. The operative portion of Ext.P7 order is extracted hereunder:-

6. In view of the above, the Chancellor, University of Calicut has ordered that Dr.B.Karunakaran is eligible for notional appointment as Professor of Sanskrit in the University of Calicut in the scale of pay of Rs.2450-3600 w.e.f 19.08.1989 or from the date on which any appointment was made by the University from the notification dated 17.10.1987, whichever is later, with admissible allowances and

consequential pensionary benefits. The University of Calicut is therefore directed to take further steps in the matter and report compliance.

10. The present controversy arose from the interpretation placed on the relief granted by the Chancellor; whether Dr.B.Karunakaran was entitled to the pay and allowances for the period when he could have continued, on the basis of the selection conducted pursuant to Ext.P1 notification and in obedience to Ext.P2 order of the Chancellor. Only notional appointment was granted by Ext.P7 w.e.f. 19.08.1989, the date on which the Syndicate took the decision to deny appointment to Dr.B.Karunakaran; on the ground of faulty constitution of the Selection Committee.

11. A plain reading of Exts.P6 and P7 would indicate that only a notional appointment was directed by this Court and by the Chancellor. But eventually, as the facts disclose, the entire benefits were paid to Dr.B.Karunakaran. As a consequence recovery was sought for, from the petitioner herein, for the period he continued as Professor which however

was declared to be a valid appointment, by this Court in another writ petition.

12. The petitioner's appointment came up for consideration in a writ petition, filed by the Association of University Teachers, seeking a quo-warranto against him. The same was concluded by Ext.P9 judgment. Another learned Single Judge of this Court, categorically found that Ext.P6 judgment, produced herein, could not have any bearing on the petitioner's appointment; since his appointment was never quashed and the relief granted was to Dr.B.Karunakaran, who was the petitioner in the said writ petition; again by way of only notional benefits. Ext.P6 judgment was produced as Ext.P9 in W.P.(C) No.12787 of 2010. This Court in paragraph 14 of the judgment specifically rejected the contention of the Association of Teachers that "Ext.P9 judgment will render the selection and appointment of fifth respondent pursuant to Exts.P6 and P7 illegal and invalid" (sic). Ext.P6 therein referred, is the notification dated 24.12.1997 (Ext.P3 herein) and Ext.P7

is the resolution dated 10.09.1998 which led to the appointment made by Ext.P4 herein. The 5th respondent referred to therein was the petitioner herein.

13. This Court also considered the effect of the proceedings of the Chancellor (Ext.P10 therein), which is produced as Ext.P2 herein. It was noticed that the Chancellor had not issued any specific direction to appoint Dr.B.Karunakaran and had merely directed the Syndicate to re-consider the issue, which was never re-considered. Herein, it is to be reiterated that Dr.B.Karunakaran challenged the re-notification by a writ petition which stood disposed of by Ext.P6 judgment, wherein only notional benefits were granted and as noticed above, no interference was caused to the petitioner's appointment as Professor. The petitioner's appointment challenged by the Association in W.P.(C) No. 12787 of 2010 also did not fructify, as is indicated at Ext.P9. While rejecting the relief of quo-warranto sought against the petitioner, this Court categorically found that neither Ext.P6

judgment nor Ext.P2 decision of the Chancellor could result in any defect being visited on or occasioned to, the appointment of the petitioner. The petitioner's appointment hence obtained further credibility, by virtue of Ext.P9 judgment, confirmed by Ext.P10 judgment, in appeal. The writ appeal filed by the Association of Teachers was found to be lacking in merit and in bona fides; by the Division Bench as per Ext.P10.

14. The University of Calicut had filed a writ appeal from Ext.P6 judgment, which granted notional benefits, which also was rejected by Ext.P11 judgment dated 24.01.2012 of the Division Bench. The Division Bench noticed that the only direction of the learned Single Judge, was to the Chancellor to consider whether Dr.B.Karunakaran is entitled to any **“notional benefits”** (emphasis supplied). It was also noticed by the Division Bench that one another person, the petitioner herein was appointed as Professor subsequently. It was also observed by the Division Bench that there is no need for the Court to consider the issue and it was for the University to find a

solution to the problem created by itself.

15. On the basis of the observations in Ext.P11 decision of the Syndicate came into force, which decision is extracted hereunder; from Ext.P14 (Item No.2012.223):-

Resolved that the appointment of Dr.T.K Narayanan, the 3rd respondent in W.A.504/2010 as Professor of Sanskrit in the University Department of Sanskrit with effect from 11.09.1998 against the vacancy arose due to the denial of appointment to Dr.B.Karunakaran be cancelled notionally and he be permitted to continue in his original post as Reader, giving him notice.

Dr.T.K.Narayanan will be eligible to receive pay and allowances as Reader. The excess pay and allowances drawn by him as Professor will be recovered from the salary and pensionary benefits of Dr.T.K Narayanan, after giving proper notice.

Also resolved to authorise the Registrar and the Finance Officer of the University to disburse the eligible benefits to Dr.B.Karunakaran on or before 31.03.2012 in order to avoid the contempt of court proceedings.

On the strength of such decision, Ext.P15 order was passed directing the petitioner herein to reimburse the entire salary and allowances drawn by him for reason of Dr.B.Karunakaran

having been granted such salary and allowances from 19.08.1989 onwards.

16. In fact the controversy was rendered more complex, in a contempt petition filed by Dr.B.Karunakaran. Dr.B.Karunakaran had filed W.P.(C) No.28769 of 2010 seeking implementation of the order dated 19.02.2010 of the Chancellor (Ext.P7 produced herein). The operative portion of the said judgment in W.P.(C)No. 28769 of 2010 was as follows:

6. In the light of the clear stand taken in the above paragraphs, the contention of the University that the petitioner is not eligible for monetary benefits, cannot be accepted. Therefore, the direction in Ext.P4 will have to be implemented.

7. The writ petition is therefore allowed. There will be a direction to respondents 1 and 3 to quantify the benefits allowable to the petitioner as per Ext.P4 and disburse the same within a period of three months from the date of receipt of a copy of this judgment.

17. The University took a stand that since this Court had directed only notional benefits, to be granted to the petitioner and as per the decision of the Chancellor, the

petitioner could be only granted notional appointment. Dr.B.Karunakaran then, was before this Court with a contempt petition numbered as COC No. 76 of 2004, in which the matter was considered by the learned Single Judge, who heard and decided W.P.(C) No.28769 of 2010. In fact, this Court finds that the judgment in the contempt court case is more elaborate than the judgment in the writ petition. In the contempt case, the Court found that the direction in the order of the Chancellor as also in the judgment dated 09.08.2011 in W.P.(C) No.28769 of 2010 was for grant of the entire monetary benefits. The University raised a challenge, allegedly against the specific directions in the contempt petition. The contemnors being the Registrar-in-charge and the Vice Chancellor field an appeal from the order of the contempt court.

18. A Division Bench of this Court, found that there is no such direction in the judgment impugned rightly so, for the following reasons: The operative portion of the judgment

in W.P.(C) No.28769 of 2010, herein above, specifically rejected the contention of the University that the petitioner is not eligible for monetary benefits. It was also directed that the order of the Chancellor be implemented. Hence effectively the direction in W.P.(C) No.28769 of 2010 was to grant monetary benefits to Dr.B.Karunakaran from his effective date of appointment, as ordered by the Chancellor, from 19.08.1989.

19. It has to be noticed that the same works against the concept of notional appointment, which alone; this Court in Ext.P6 granted. The Chancellor too allowed only notional appointment. However, W.P.(C) No.28769 of 2010 has attained finality, in which the monetary benefits were directed to be paid. In fact the Division Bench had clarified that a review could be filed. The Division Bench noticed that, clarification required could be obtained from the Court, which has passed the impugned order. No clarification could be made to the order passed in contempt case, since the order in the writ petition clearly directed that monetary benefits are to be

granted. The University failed to appeal from the judgment in W.P.(C) No. 28769 of 2010 and that stares at the University as far as the disbursal of monetary benefits to Dr.B.Karunakaran. The University when filing an appeal from the order in contempt; was obviously, to use an expression; 'barking up the wrong tree'. But that cannot in any manner result in the petitioner being ousted from a valid appointment in which he continued and retired.

20. The payment made by the University to Dr.B.Karunakaran cannot be a reason for taking back the pay and allowances already paid to the petitioner, especially when he is admitted to have been appointed validly to the post of Professor and having continued there till Ext.P14 decision of the Syndicate came. As was noticed in Ext.P11 judgment, the University alone can be blamed for the woes which befell on it by the above litigations.

21. The decision of the Syndicate is also without any notice to the petitioner. The learned Standing Counsel for the

University, points out that the resolution itself speaks of a notice to be given to the petitioner. But, however there would be no purpose in issuing a notice, after the Syndicate had taken a decision. The learned Standing Counsel also took up a contention that the petitioner had been acting as Registrar and was also part of the Syndicate when Dr.B.Karunakaran's appointment was rejected. The allegation is of malafides, which unfortunately was not raised before this Court in the earlier litigations and there was never even an examination of the alleged fact of the petitioner having participated in the Syndicate meeting, wherein Dr.B.Karunakaran's appointment is said to have been rejected. The entire allegation of malafides raised at this stage is in the realm of a conjecture and nothing is placed on record even now to substantiate the same.

22. Be that as it may, it is to be reiterated that the challenge made to the fresh notification made, by Dr.B.Karunakaran did not end in the notification or the appointment of the petitioner being set aside. The petitioner

admittedly was appointed on 14.10.1998 as per Ext.P4 and continued as Professor, till his retirement on 31.05.2012, just prior to which the Syndicate seems to have taken a decision at Ext.P14.

23. The petitioner is hence entitled to be disbursed the entire pay and allowance. It is an admitted fact that the petitioner after being appointed as Professor, was on deputation for 5 years as Director of Academic Staff College, where he was paid salary in the U.G.C scale directly and no such payment could be recovered by the University. The decision of the Syndicate at Ext.P14 as item No.2012.223 is set aside and as a consequence, Ext.P15 would also stand set aside.

24. The petitioner's appointment is declared to be regularised from 14.10.1998 and the petitioner is entitled to the entire pay and allowances, which has already been paid to him and if any amount is withheld, including the pensionary benefits, shall be disbursed considering the petitioner as a

Professor in Sanskrit, appointed on 14.10.1998 and continued till the date of his superannuation. The said direction would be complied with within a period of four months from the date of receipt of the certified copy of this judgment.

The writ petition is allowed. Parties are left to suffer their respective costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/17/11/2015

// true copy //

P.A to Judge.