

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.4976 of 2014 (V)

PETITIONERS:

1. **DR.SHERIN THOMAS,ASST.PROFESSOR,
DEPARTMENT OF PHYSICS,
ASSUMPTION COLLEGE,
CHANGANACHERRY,PIN-686101**
2. **THE MANAGER,ASSUMPTION COLLEGE,
CHANGANCHERRY,PIN-686101**

**BY SRI.BABU VARGHESE (SENIOR ADVOCATE.)
ADV.SRI.C.V.ALEXANDER**

RESPONDENTS:

1. **MAHATMA GANDHI UNIVERSITY,
REP. BY ITS REGISTRAR,PRIYADHRSHINI HILLS,
ATHIRAMPUZHA,KOTTAYAM-686560.**
2. **STATE OF KERALA,
REP. BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
3. **DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN,THIRUVANANTHAPURAM-695033**
4. **DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOTTAYAM-686001.**

**R1 BY DR.P.LEELAKRISHNAN,SC, M.G.UNIVERSITY
R1 BY SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
R2 TO R4 BY SENIOR GOVT. PLEADER SRI.V.VIJULAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE NOTIFICATION DTD 3/5/2011 ISSUED BY THE COCHIN UNIVERSITY AWARDING PH D DEGRE TO THE PETITIONER.

EXT.P1(a):TRUE COPY OF THE M.SC.DEGREE CERTIFICATE ISSUED TO THE IST PETITIONER.

EXT.P1(b):TRUE COPY OF THE B.SC.DEGREE CERTIFICATE ISSUED TO THE IST PETITIONER.

EXT.P2:TRUE COPY OF THE PUBLIC NOTIFICATION ISSUED BY THE 2ND PETITIONER INVITING APPLICATIONS FROM ELEIGIBLE CANDIDATES.

EXT.P3:TRUE COPY OF THE GOVERNMENT LETTER DTD 16/2/2012 GIVING ITS CONCURRENCE FOR NOMINATION OF SRI CRIMON WESTER AS GOVT.REPRESENTATIVE IN THE STAFF SELECTION COMMITTEE FOR FILLING UP CERTAIN VACANCIES.

EXT.P4:TRUE COPY OF THE MINUTES OF THE STAFF SELECTION COMMITTEE HELD ON 10/3/2012.

EXT.P5:TRUE COPY OF THE APPOINTMENT ORDER DTD 15/3/2012 ISSUED BY THE 2ND PETITIONER IN FAVOUR OF THE IST PETITIONER.

EXT.P6:TRUE COPY OF THE PROPOSAL DTD 16/7/2012 SENT BY THE 2ND PETITIONER FOR THE GRANT OF APPROVAL.

EXTR.P7:TRUE COPY OF THE LETTER DTD 11/2/2013 SENT BY THE PRINCIPAL OF THE COLLEGE TO THE IST RESPONDENT.

EXT.P8:TRUE COPY OF THE LETTER DTD 6/4/2013 SENT BY THE PRINCIPAL

EXT.P9:TRUE COPY OF THE LETTER DTD 14/6/2013 ADDRESSED TO THE IST RESPONDENT UNIVERSITY.

EXT.P10:TRUE COPY OF THE ORDER DTD 3/6/2013.

EXT.P11:TRUE COPY OF THE LETTER DTD 10/9/2013 SENT BY THE 2ND PETITIONER.

EXT.P11(a):TRUE COP YOF THE LETTER DTD 7/1/2014 ISSUED BY THE IST RESPONDENT UNIVERSITY.

EXT.P12:TRUE COPY OF THE WORKLOAD STATEMENT SUBMITTED BY THE PRINCIPAL TO THE IST RESPONDENT.

EXT.P13:TRUE COPY OF THE SYLLABUS OF THE B SC DEGREE COURSE PHYSICS.

WP(C).No.4976 of 2014 (V)

**EXT.P13(a):TRUE COPY OF THE LETTER DTD 20/1/2014 SENT BY THE PRINCIPAL
TO THE UNIVERSITY.**

**EXT.P14:TRUE COPY OF THE RELEVANT PAGES OF THE APPLICATION
SUBMITTED BY THE IST PETITIONER TO THE UGC FOR APPROVAL OF A
MAJOR RESEARCH PROJECT.**

**EXT.P14(a):TRUE COPY OF THE SANCTIONLETTER OF THE UGC GRANTING
APPROVAL FOR THE PROJECT.**

**EXT.P15:TRUE COPY OF THE SENIORITY STAFF LIST OF THE PHYSICS
DEPARTMENT.**

**EXT.P16:TRUE COPY OF THE UNIVERSITY ORDER DATED 4.1.2013 APPROVING
THE APPOINTMENT OF MS.JOSELIN XAVIER.**

**EXT.P17:TRUE COPY OF THE APPOINTMENT LETTER DATED 24.4.2014 AS
ADDL.EXAMINER FOR B.SC.EXAMINATION ISSUED BY THE 1ST
RESPONDENT UNIVETSITY.**

**EXT.P18:TRUE COPY OF THE APPLICATION DATED 19.2.2014 SUBMITTED THE
RESPONDENT UNIVERSITY UNDER RTI ACT.**

**EXT.P18(a):TRUE COPY OF THE REPLY DATED 1.4.2014 FURNISHED BY THE
RESPONDENT UNIVERSITY.**

**EXT.P19:TRUE COPY OF THE APPLICATION DATED 7.6.2014 SUBMITTED UNDER
RTI TO THE RESPONDENT UNIVERSITY.**

**EXT.P19(a):TRUE COPY OF THE REPLY FURNISHED BY THE RESPONDENT
UNIVERSITY.**

**EXT.P10:TRUE COPY OF THE INFORMATION FURNISHED BY THE 4TH
RESPONDENT ON 23.9.2014.**

RESPONDENT'S EXHIBITS AND ANNEXURES:

**ANNEXURE R1(a):TRUE COPY OF G.O(RT) NO.2691/2012/H.EDN
DATED 18.12.2012.**

//TRUE COPY//

P.S. TO JUDGE

pk

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.4976 of 2014

Dated this the 19th day of March, 2015

JUDGMENT

The first 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 15.3.2012.

2. The College made a statement of workload for the year 2010-2011 based on the students strength on 1.11.2009. This workload would clearly indicate that the total workload is 159 and number of posts admissible is ten. The first petitioner has been appointed as 10th post in the College. The workload statement is produced as Ext.P12. The University

did not approve the appointment. Thus, the petitioners have approached this Court.

3. The stand of the University is that they did not verify the workload submitted by the College as per Ext.P12. The case of the University is that based on the Government Order, which is produced as Ext.R1(a) 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 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 referrable 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 first petitioner shall be approved forthwith

provisionally. There is no dispute regarding qualification of the first 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.P12.
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 first 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 first petitioner is appointed to admissible post, entire arrears of salary shall be paid to the first petitioner within three months thereafter.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln