

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(C).No. 7565 of 2013 (U)

PETITIONER:

DR.AMBEESHMON S. AGED 36 YEARS
ANISH NILAYAM, VARANAD P.O., CHERTHALA
ALAPPUZHA DIST.

BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN

RESPONDENTS:

1. THE REGISTRAR, UNIVERSITY OF KERALA
THIRUVANANTHAPURAM - 695 034.

2. THE VICE CHANCELLOR, UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM - 695 034.

R1 & 2 BY ADV. SRI.GEORGE POONTHOTTAM,SC,KERALA UTY.
R1,R 2 BY ADV. SRI.BECHU KURIAN THOMAS, SC,
UNIVERSITY OF KERALA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONER'S EXHIBITS

EXT.P-1 TRUE COPY OF THE NOTIFICATION ISSUED BY THE UNIVERSITY OF KERALA DATED 17.6.2011

EXT.P-2 TRUE COPY OF THE MBA DEGREE CERTIFICATE OF THE PETITIONER.

EXT.P-3 TRUE COPY OF THE PH.D.DEGREE CERTIFICATE OF THE PETITIONER.

EXT.P-4 TRUE COPY OF THE NET CERTIFICATE OF THE PETITIONER.

EXT.P-5 TRUE COPY OF THE COMMUNICATION DATED 25.10.2012 ISSUED BY THE 1ST RESPONDENT.

EXT.P-6 TRUE COPY OF THE REPORT APPEARED IN KERALA KAUMUDI DAILY DATED 2.1.2013

EXT.P-7 TRUE COPY OF THE REPORT APPEARED IN MATHRUBHUMI DAILY DATED 1.1.2013

EXT.P-8 TRUE COPY OF THE RELEVANT PORTION OF THE PRELIMINARY MINUTES OF THE 15TH MEETING OF THE SYNDICATE HELD ON 31.12.2012

EXT.P-9 TRUE COPY OF THE APPLICATION DATED 2.1.2013 SUBMITTED BY THE PETITIONER BEFORE THE PUBLIC INFORMATION OFFICER, UNIVERSITY OF KERALA UNDER THE RTI ACT.

EXT.P-10 TRUE COPY OF THE REPLY GIVEN TO THE PETITIONER AS PER COMMUNICATION DT.5.2.2013.

EXT.P-11 TRUE COPY OF THE ADDITIONAL REPLY GIVEN TO THE PETITIONER AS PER COMMUNICATION DATED 5.2.2013.

EXT.P-12 TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 28.2.2013 ISSUED BY THE CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION.

EXT.P-13 TRUE COPY OF THE ORDER G.O(P) NO.20/2013/FIN DATED 7.1.2013 ISSUED BY THE GOVT.

EXT.P-14 TRUE COPY OF THE REPRESENTATION DATED 4.3.2013 SUBMITTED BY THE PETITIONER BEFORE THE VICE CHANCELLOR.

EXT.P15: COPY OF THE AGENDA OF THE MEETING OF THE SYNDICATE OF THE KERALA UNIVERSITY CONTAINING THE REPORT OF THE REGISTRAR DT.26.3.13

EXT.P16: COPY OF THE PRESS RELEASE DT. 26.3.13 ISSUED BY THE UNIVERSITY

EXT.P17: COPY OF THE APPLICATION FORM FOR TEACHING POSTS FOR THE UNIVERSITY OF KERALA

EXT.P18: COPY OF THE PROCEEDINGS DT.30.4.11 ISSUED BY THE CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION

EXT.P19: COPY OF THE ORDER DT.26.9.11 ISSUED BY THE CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION

EXT.P20: TRUE COPY OF THE JUDGMENT DT.6.1.09 IN WPC NO.38145/2008 OF THIS HONOURABLE COURT

EXT.P21: TRUE COPY OF THE COMMUNICATION DT.9.4.13 SENT BY DR.J.RAJAN TO THE REGISTRAR.

RESPONDENTS' EXHIBITS

R1(a): COPY OF THE COMPLAINT DT.9.4.09

R1(b): COPY OF THE COMPLAINT DT.16.6.09 GIVEN BY THE STUDENTS OF MBA EVENING BATCH AT THE INSTITUTE AGAINST THE PETITIONER.

R1(c): COPY OF THE STATEMENT DT.23.3.13

R1(d): COPY OF THE MINUTES OF THE PROCEEDINGS HELD ON 31.12.2012

R1(e): COPY OF THE COMPLAINT DT.5.12.12 ALONG WITH ITS ENCLOSURES.

R1(f): COPY OF THE REPORT ON THE ALLEGATIONS RAISED AGAINST SRI.AMBEESHMON, LECTURER SELECT IN THE INSTITUTE OF MANAGEMENT IN KERALA

R1(g): COPY OF THE MINUTES OF THE MEETING HELD ON 26.3.2013.

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

W.P.(C) No.7565 of 2013

Dated this the 18th day of August, 2015

JUDGMENT

Aggrieved by the refusal on the part of the respondent University to appoint the petitioner as Lecturer in the Institute of Management in Kerala University despite his selection as rank No.1 by a duly constituted selection committee, the petitioner has filed this writ petition. The issue arising for consideration is whether the syndicate can reject the recommendation of the selection committee on the basis of anonymous (or otherwise) complaint against the selected candidate.

2. University of Kerala (hereinafter referred to as University) issued Ext.P1 notification inviting applications for the post of Lecturers, (re-designated as Assistant Professors) in various disciplines including Institute of Management on 17.6.2011, from among eligible candidates. The qualification prescribed for the post was Degree in Master of Business Administration with 55% marks with pass in eligibility test for Lectureship conducted by UGC or CSIR or similar test conducted

by the UGC. The petitioner, who is a first class degree holder in Master of Business Administration with Ph.D in Management from Kerala University and pass in National Eligibility Test submitted his application. He appeared for the interview held on 6.11.2012 before the interview board chaired by the Vice Chancellor. He was adjudged as first rank holder. Thereafter the minutes of the selection committee was placed before the Syndicate in its meeting held on 31.12.2012, for approval. But the Syndicate did not approve the same, while approval was granted in the case of other candidates, who were selected for appointment in other disciplines. Petitioner's case was deferred by Syndicate, which can be seen from Ext.P8 minutes of the meeting of the Syndicate held on 31.12.2012. At the same time in the case of other four candidates selected for appointment as Lecturers in Commerce, approval was granted.

3. The petitioner came to know that there were certain complaints placed before the Syndicate, with allegations against him relating to the period from 1.7.2004 to 6.7.2009, while he was working as Lecturer in the University on contract basis. On

coming to know about this, petitioner sought information regarding the complaints if any against him for the relevant period submitting Ext.P9 application under the Right to Information Act. Public Information Officer of the University, by Ext.P10 letter, informed that there was no complaint against him regarding sexual harassment on any student during or after the period of service in the Institute of Management in Kerala, while he was working on contract basis as Lecturer. It was also informed that no disciplinary action was taken against the petitioner during the period of his service. It was also informed that his service was terminated only on the completion of contract period. Further as per Ext.P11 communication dated 5.2.2013, he was informed that no complaint was received in the Institute of Management against the petitioner.

4. On the strength of the reply received from the University on Right to Information, the petitioner submits that he is denied appointment on the basis of a false complaint against him and his legitimate right to get appointed is delayed and defeated. It is further stated that all the four persons who got selected in other

disciplines based on the approval of the Syndicate on 31.12.2012 got appointment in January 2013 and hence they became eligible for the benefit of pension under Kerala Service Rules (KSR for short) since their appointments happened to be before 1.4.2013. Aggrieved by the delay in appointment, the petitioner approached the Vice Chancellor requesting to take up the matter and to issue orders of appointment. According to the petitioner, there was no circumstances for denying him appointment. Immediately after the contract period of appointment in the Institute of Management in Kerala, he was undergoing research studies leading to Ph.D which was awarded to him in January 2010. Thereafter he got appointment as Assistant Professor in the Institute of Management and Technology, Punnapra under the Co-operative Academy of Professional Education. The Syndicate did not consider his case in the subsequent meetings held in February 2013 or March 2013. At this juncture saying that any further delay in appointment will deprive him of the pensionary benefits available for those who get appointment before 1.4.2013, he approached the Vice Chancellor again with a

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representation-Ext.P14 and thereafter approached this Court by filing this writ petition on 18.3.2013.

5. It is stated that when the matter came up for admission on 19.3.2013, it was adjourned for getting instructions to 1.4.2013 and in the meanwhile the Syndicate met on 26.3.2013 and in that meeting a report was submitted by the Registrar regarding some allegations against the petitioner. On the basis of those allegations, the Syndicate decided to conduct a detailed enquiry into the allegations. From the minutes of meeting held on 26.3.2013, it is seen that the Vice Chancellor had ordered an enquiry into the allegations against the petitioner. These allegations included complaints addressed to the then Head of the Department Dr.K.S.Chandrasekhar. The minutes of the meeting contain the following:

The allegations were that he was not good as a teacher and was rude to students including a foreign student while he was a contract lecturer in IMK. He used to take classes for,MB A evening batch in an intoxicated state. As ordered by the Vice-Chancellor an enquiry into the allegations was conducted and the following are the findings:

1. *Sri.Ambeeshmon was a lecturer on contract*

in IMK from 01/07/2004 to 06/07/2009.

2. *Complaints from an Iranian girl student and the students of evening batch of MBA in IMK regarding the misconduct of Sri.Ambeeshmon contract lecturer were received in 09/04/2009 and 16/06/2009.*

3. *The complaints were addressed to the then Head of the Department Dr.K-S.Chandrasekar who has given a written statement now that the character and conduct of Sri.Ambeeshmon were not befitting to be appointed as a faculty in this University. He also states that he was not consulted while issuing reply regarding any complaint against Sri-Ambeeshmon by the University.*

4. *The Iranian student also is of the opinion that SriAmbeeshmon is not good as a Teacher and used to mentally torture her while she was doing MBA in IMK during 2009.*

5. *She admits that a police case has been preferred by her regarding threatening anonymous calls received by her during 2009 and she suspects Ambeeshmon is behind this. But the police caught someone else and now she does not accuse him for the calls.*

6. *Sri.Ambeeshmon while working in CAPE was placed under suspension from 03/11/2010 to 12/01/2011. He did not mention anything in column 25 in the application form for the post of*

Assistant Professor in IMK dated 14/07/2011.

Therefore the allegations against Sri.Ambeeshmon are prima facie true and therefore a detailed enquiry may be conducted in this regard.

6. In the press release it was notified that Syndicate decided not to approve the select list prepared for the post of Lecturer in the Institute of Management in Kerala and to re-notify the post. Consequent to this development, the writ petition was amended incorporating the minutes and Exts.P15 to P19.

7. It is alleged that the allegations against the petitioner, while he was working on contract basis during the period from 1.7.2004 to 6.7.2009, was based on a complaint from an Iranian girl student and students of evening batch of MBA. Complaints regarding the misconduct of the petitioner were seen received on 9.4.2009 and 16.6.2009. The petitioner submits that he was not aware of any of such complaint and those are created after the interview was held or otherwise it would have found a place before the University Department. Therefore the petitioner alleges that the statement contained in Ext.P15 ie., complaints regarding misconduct of petitioner from Iranian girl and students

of evening batch were absolutely incorrect and hence the report of the Registrar cannot be relied on. According to him, the Registrar ought to have made appropriate enquiry with notice to him. He further stated that Dr.K.S.Chandrasekar, the then Head of the Department, had given a written statement that character and conduct of the petitioner were not befitting to be appointed as Faculty in the University. It is also seen that he had stated that he was not consulted while issuing reply regarding complaints received against the petitioner. According to the petitioner, it was not necessary to consult Dr.K.S.Chandrasekar, who alleged to have received the false complaint and at whose instance those false complaints were created. According to the petitioner, those complaints were never filed before Dr.K.S.Chandrasekar, when he was the Head of the Department, the falsely created complaints cannot be relied on and Dr.K.S.Chandrasekar is interested in canceling the selection of the petitioner, since he is inimical towards Dr.J.Rajan, Head of the Department whom the petitioner was assisting. The petitioner asserts that his selection cannot be restrained on the basis of

such unreliable complaints and reports. He pointed out that in the inquiry conducted by Police it was found that the alleged threatening anonymous calls received by the Iranian girl was not originated from the petitioner and as admitted by that girl. Yet another compliant against the petitioner was that he did not mention the fact that he was placed under suspension, while working in Co-operative Academy of Professional Education for the period from 3.11.2010 to 12.1.2011, in the application form and that he should have mentioned it. But with the support of the application form-Ext.P17 petitioner points out that there was no column for furnishing such information about the said suspension because the only question to be answered is :

"have you been de-barred from appearing for any exam conducted by KPSC or any Central/State Government/Quasi Government bodies/Dismissed from service or convicted by a Court of Law. Yes/No. If yes give details:"

He further pointed out that the Co-operative Academy of Professional Education had subsequently dropped the proceedings and had issued orders to treat the period of suspension as duty for all purposes. In the above circumstances, it is stated that the

action of the Syndicate in not approving the selection of the petitioner despite being found rank No.1 is contrary to rules and he is deprived of his legitimate opportunity to get appointment under the State on illegal and unreasonable grounds.

8. Statute 4 under Chapter III of the Kerala University First Statutes, 1977, provides for the procedure to be followed by the selection committee for appointment of teachers. Clause 1 of statute 4 provides that when posts are to be filled up after inviting applications by advertisement, the applications received shall first be screened by a Committee consisting of the Head of the concerned University Department of Study and Research, and members of the standing committee of the Syndicate and staff, equipments and buildings. The applications found in order by the said committee shall be referred to a selection committee as prescribed therein. Clause 3 thereof provides that recommendations of the selection committee shall be placed before the Syndicate which was making appointments. Clause 3 thereof reads as follows:

"The recommendations of the selection committee

shall be placed before the Syndicate, which shall make the appointments”.

Clause 4 reads as follows:

“Provided that when the Syndicate proposes to make the appointment otherwise than in accordance with the above provisions, the Syndicate shall record its reasons and submit its proposals for the sanction of the Chancellor”.

9. It is the case of the petitioner that the Syndicate has not taken any action as provided in clause 4 of Statute 4, in case it proposed to make appointments otherwise than on the basis of the recommendations of the selection committee. It has not placed any proposals after recording reasons and it has not obtained sanction from the Chancellor. Therefore, since the selection committee had already ranked the petitioner as No.1 on the basis of a due process of selection, the Syndicate ought to have approved his selection and ordered for his appointment along with those whose case were considered on 31.12.2012, as provided in clause 3 of statute 4. According to the petitioner, the refusal to approve his selection not only delayed his appointment but also took away his eligibility for pensionary benefits under

KSR which would have been admissible to him, in case he was appointed at the right time along with those considered on 31.12.2012. According to him, the false complaints made against him by the interested persons to betray his career should not have weighed with the Syndicate which is bound by the provisions contained in the statute. He also submits that the reports placed before the Syndicate on the basis of enquiry behind his back has resulted in severe civil consequence on him affecting his career as such.

10. The University has filed a counter affidavit admitting that the petitioner was selected as rank No.1 by the selection committee. But the Syndicate had deferred the matter in view of the complaints placed before it. In the counter affidavit, it is stated that the University received Ext.R1(a) complaint dated 9.4.2009 from an Iranian student. Ext.R1(b) complaint dated 16.6.2009, from the students of evening batch in the Institute of Management, apart from the complaints from first year MBA evening students raised against the petitioner on 13.5.2009 and 15.5.2009 before the Vice Chancellor and the Director of the

Institute. According to respondents, the reply furnished under the Information Act to the petitioner was not correct as complaints were received against the petitioner. They also relied on the statement furnished by Dr.K.S.Chandrasekar and his recommendation not to appoint the petitioner; the Public Information Officer had furnished information on the basis of the details collected from Dr.J.Rajan for which explanation is called for from him. Therefore, it was stated that there were complaints against the petitioner during his tenure as a contract Lecturer in the institute and Dr.Chandrasekar had abstained from taking any action against the petitioner, since the petitioner's tenure was about to expire; however his contract was not renewed thereafter. According to the respondents, the Syndicate decided to defer the matter of appointment of the petitioner on the basis of an anonymous complaint preferred to a member of the Syndicate which was placed before it on 31.12.2012. In that complaint-Ext.R1(e), the first year evening batch of MBA students had made similar allegations against the petitioner. The contention of the petitioner that the complaints were created

after recommendations of the selection committee to deny his appointment was denied. In the back ground of the receipt of complaints against the petitioner, the Vice Chancellor entrusted the Registrar of the University to enquire into the allegations and the Registrar submitted Ext.P15 report on the allegations against him and recommended a detailed enquiry in that regard, as per Ext.R1(f). The respondents contended that the decision taken by the Syndicate on 26.3.2013 not to approve the recommendations of the selection committee and to re-notify the post for fresh selection was in accordance with law. Referring to clause 3 of statute 4 of Chapter III of the Kerala University First Statutes, 1977, it is contended that unless the Syndicate approve the recommendations of the selection committee, no appointment can be made and in this case since the Syndicate resolved not to approve the recommendations, the question of appointment of the petitioner does not arise. Therefore, it is contended that petitioner does not have any right to claim appointment, merely on the basis of inclusion of his name in the select list.

11. Sri.C.P.Sudhakara Prasad, learned Senior Counsel

appearing for the petitioner relies on an unreported judgment of this Court in O.P.No.2123 of 1989 dated 12.11.1992 and argued that once the selection committee included him in the rank list, the next step is appointment. In that judgment, after a detailed consideration of various provisions contained in the statutes, this Court found that when an expert body was of the opinion that the candidate was suitable for appointment to the post of Reader in the department of Hindi and he was placed first among the 7 candidates appeared, there was no justification to deny him appointment on the part of the Syndicate.

12. The learned Senior Counsel appearing for the petitioner relied on the judgment in ***Sobha B.Nair Vs. University of Kerala*** [2004 (1) KLT 541], wherein, the judgment in O.P.No.2123 of 1989 was followed and in paragraphs 14 to 17 it was held that the petitioner had every right to be appointed on the basis of his selection by the selection committee and Syndicate was not competent to deprive his opportunity for employment contrary to the statute. Further the judgment of the Apex Court in ***Vice Chancellor, University of Allahabad and***

others Vs. Dr.Anand Prakash Mishra and others [1997 (10) SCC 264] and the recent judgment of this Court in W.P.(C) No.12874 of 2014 are also relied on by the learned Senior Counsel in support of his contention that once the selection committee includes a candidate in the select list, the University has no other go but to make appointment on the basis of such selection.

13. On the other hand, the learned counsel appearing for the University relied on the judgments in ***Vice Chancellor, University of Allahabad and others Vs. Dr.Anand Prakash Mishra and others*** [1997 (10) SCC 264], ***The State of Andhra Pradesh Vs. T.Ramakrishana Rao and others*** [1972 (4) SCC 830] and ***Shankarsan Dash V. Union of India*** [AIR 1991 SC 1612] asserting that petitioner does not have any right to get appointment merely on the basis of his selection. The learned counsel, attempted to distinguish the judgments relied on by the learned counsel for the petitioner pointing out that in all those cases, the dispute was with respect to qualification of the candidate and there were no circumstances where complaints as

to conduct of the candidate, came up before the Syndicate. Since the University has already re-notified the post, the petitioner cannot have any claim for appointment. It is also pointed out that the allegations raised against Dr.Chandrasekar without impleading him on the party array will remain only as allegations not substantiated. Therefore such contentions cannot be considered at all. The petitioner who was never issued any offer of appointment cannot be said to be aggrieved by the non-appointment.

14. According to the University, when complaints are placed before the Syndicate regarding the moral turpitude of the candidate, it has got every right to cancel the same and to deviate the procedure and in this case they have already decided not to act upon the decision of the selection committee.

15. Having heard the contentions on either side, the only point to be looked into is whether a candidate can be denied appointment on the basis of certain complaints placed before the Syndicate that too relating to a period of about 10 years back (2004-09), against which no action was taken and whether the

Syndicate has got any authority to go into the questions relating to character and antecedents of a candidate once the selection committee adjudged him as rank No.1.

16. Chapter III of the Kerala University First Statutes, 1977 provides for the procedure for selection and appointment to teaching posts. Clause 3 of Statute 4 reads as follows:

"The recommendations of the selection committee shall be placed before the Syndicate, which shall make the appointments".

According to this, the recommendations of the selection committee shall be placed before the Syndicate which shall make the appointment. The expression employed is "shall" make the appointment. Therefore the role of the Syndicate is only to approve the recommendations. Thus it can be seen that there is no provision in the Statute authorising the Syndicate to go into any other matter or inquire into the complaints once the candidate is included in the select list. When the statute prescribe the procedure to be followed for selection and appointments, the syndicate has to go by that procedure alone. It is settled law, by a catena of judgments of the Apex Court and

this Court, following the principles laid down in ***Taylor v. Taylor*** [(1875) 1 Ch D 426 : 45 LJCh 373], which was reiterated in ***Babu Verghese v. Bar Council of Kerala***, [(1999) 3 SCC 422], that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.

17. In this case the Syndicate initially deferred the decision in its meeting held on 31.12.2012 on the basis of an anonymous complaint received by one of the members. Of course it is stated that an enquiry was conducted by the Registrar on directions by the Vice Chancellor and it is also found that one of the Head of the Department recommended not to appoint the petitioner who was found eligible for appointment by the selection committee. But there is no provision for such considerations on extraneous materials once the selection committee found a candidate eligible and adjudged his merit. In this case, the allegations are stated to be of the period from 2004-2009, when the petitioner was working on contract basis under the University against which the University has not taken any action. On the basis of such unfounded allegation the Syndicate or the University do not have

any authority to go into further enquiry and to deny appointment on the basis of such unauthorised procedures adopted contrary to the provisions contained in the statute.

18. In this case the syndicate has not followed the procedure contained in clause 4 which provides that it shall record reasons for any deviation from the recommendation of the selection committee and that the post can be re-notified only after getting sanction from the Chancellor. When statute provides for certain procedures to be followed in the matter of selection and appointment, the statutory authorities are bound by the procedure, prescribed in the statute. In case the statutory authorities had acted in accordance with the procedure, the petitioner would have got appointment in January 2013 itself. But taking into account, certain extraneous materials contrary to the provisions in the statute, the career of a competent young candidate got spoiled. It is true that the judgments of this Court in O.P.No.2123 of 1989, ***Sobha B.Nair Vs. University of Kerala*** [2004 (1) KLT 541]¹ and W.P.(C) No.12874 of 2014 did not deal with a circumstance as in the present case. In the first

case, the dispute was with respect to the qualification of the candidate whereas in the 2nd case the syndicate rejected the recommendation of the selection committee on apprehension of bias, since the selected candidate happened to be the daughter of a former Professor of the University. However provisions contained in the statute for the purpose of selection came under consideration therein and it was held therein that the Syndicate has to approve the decision of the selection committee and the University has to make the appointment on the basis of such approval. In ***Sobha B.Nair Vs. University of Kerala*** (supra), after considering the provisions contained in the statute, it was held as follows:

"15. xxxxx The manner in which the provisions had been incorporated in the statute do indicate that once the selection is made by the Committee, the Syndicate has to take follow up steps for appointing the persons concerned and has no residuary or other powers to reject the recommendation. If that was the position, the Statute would have made explicit provision for them. XXXXXXXXXXXX"

It was held that the syndicate instead of nullifying the selection, should have accepted and endorsed the selection made by the

statutory selection committee.

19. No provisions in the statute, ordinance or any regulation is pointed out conferring power on the Syndicate to delve into such complaints as and when or if and when complaint is received that too anonymous against the selected candidate. At any rate, the University has not resorted to the procedures provided under clause 4 of statute 4 of Chapter III, according to which it has to record its reasons for deviating from the provisions contained in the statute. In case it proposed to make the appointment otherwise than in accordance with the procedure provided in statute 4, it has to record its reasons and submit its proposals for the sanction of the Vice Chancellor. Such a procedure is apparently not resorted to by the Syndicate.

20. The contention that the petitioner has no right to appointment, relying on ***Shankarsan Dash V. Union of India*** (supra) cannot be accepted in so far as the issue arising in this case is based on the provisions contained in the University Statute and appointment is denied contrary to the prescribed procedure. This issue also was considered in ***Sobha B.Nair Vs.***

University of Kerala (supra).

21. Under the above circumstances, I find that the procedure adopted by the University in denying appointment to the petitioner can only be termed as arbitrary, apart from being contrary to the provisions contained in clauses 3 and 4 of statute 4 of Chapter III of the Kerala University First Statutes, 1977. The University cannot assume to have any authority to award such punishments on candidates even before their appointment on the basis of unfounded allegations. The action of the Syndicate/University results in unlawful deprivation of livelihood of the petitioner in violation of his fundamental right guaranteed under Article 14 and 21 of the Constitution of India.

22. In the above circumstances, there shall be a direction to the respondents to place the proceedings of the selection committee in respect of the selection of the petitioner for the post of Lecturer in the Institute of Management in Kerala before the Syndicate at its next meeting and to take emergent proceedings for his appointment without any further delay and at any rate within a period of two months.

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In view of the fact that the petitioner was illegally and arbitrarily denied the appointment which was due in January 2013, the University shall also consider his claim for granting benefits as in the case of those appointed before 1.4.2013.

The writ petition is accordingly allowed as above.

Sd/-

**P.V.ASHA,
JUDGE.**

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