

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 15506 of 2005 (U)

PETITIONER:

**SHEELA THOMAS,
W/O. V.V.SABU,
RESIDING AT H-1 QUARTERS,
CALICUT UNIVERSITY CAMPUS,
CALICUT UNIVERSITY P.O, PIN-673 635.**

BY ADV. SRI.P.K.IBRAHIM

RESPONDENTS:

**1. UNIVERSITY OF CALICUT,
REP. BY ITS REGISTRAR,
UNIVERSITY OF ADMINISTRATIVE OFFICE
CALICUT UNIVERSITY P.O. 673 635.**

**2. THE VICE CHANCELLOR,
UNIVERSITY OF CALICUT,
UNIVERSITY ADMINISTRATIVE OFFICE
CALICUT UNIVERSITY P.O. 673 635.**

**3. BIJU JUSTIN,
RESIDING AT 079,'
MANI UDAYANAGAR,
DOORVANI NAGAR P.O., BANGALORE.**

**R1,R2 BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUT UTY.
R3 BY ADVS. SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-01-2015, ALONG WITH WPC. 36116/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER'S EXHIBITS

- EXT- P1- TRUE COPY OF THE SELECTION NOTIFICATION No.GAII/C1/6565/01 DATED 08-05-2002.
- EXT- P2- TRUE COPY OF THE STATEMENT DATED 14-01-2003 FILED BY R1 IN OP 16629/2002.
- EXT- P3- TRUE COPY OF THE GUIDELINES No.GAII/E1/3265/95 DATED 11-11-1997 ISSUED BY R1.
- EXT- P4- TRUE COPY OF THE MINUTES DATED 14-06-2002 OF SELECTION COMMITTEE.
- EXT- P5- TRUE COPY OF THE ORDER No.GA11/C2/3073/2002 DATED 15-06-2002 ISSUED BY R1.
- EXT- P6- TRUE COPY OF THE JUDGMENT DATED 12-08-2003 IN OP 16620/2002.
- EXT- P7- TRUE COPY OF THE JUDGMENT DATED 13-10-2002 IN WA 1592/03.
- EXT- P8- TRUE COPY OF THE PSC RANKED LIST DATED 01-12-2004.
- EXT- P9- TRUE COPY OF THE MINUTES OF SYNDICATE MEETING HELD ON 29-01-2005.
- EXT- P10- TRUE COPY OF THE DETAILED NOTIFICATION No.GA11/C1/2149/04 DATED 18-04-2005.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(C)No.15506 of 2005

&

W.P.(C)No.36116 of 2009

Dated this the 27th of January, 2015.

JUDGMENT

Since the petitioner is common in both these cases and since the issues involved are intrinsically connected, both these writ petitions were heard together and disposed of through this common judgment.

2. History of the case begins in the year 2002 when the respondent University published notification inviting applications to fill up two vacancies of Lecturer in English, one of which was reserved for Latin Catholic/Anglo Indian community. Subject matter of these writ petitions pertains to selection for the post reserved for Latin Catholic/Anglo Indian community. The petitioner herein was a candidate applied pursuant to Ext.P1 notification. Altogether there were 4 candidates. One Shri. Biju Justin was selected as Rank No.1 and he was appointed. The petitioner challenged the said appointment in a writ petition filed as O.P.No.16620/2002, mainly contending that the Selection

Committee had deviated from the norms framed by the Academic Council, which was issued under the authority of the Registrar of the University, with respect to awarding of marks. This court found that, Section 25 of the Calicut University Act empowers the Academic Council to advice the Senate and the Syndicate on all academic matters and is also empowered to prescribe qualifications of teachers. It was conceded on behalf of the University that Ext.P9 produced in the said case was the guidelines prescribed by the Academic Council, which was accepted by the University, and it is the only guidelines governing selection of teachers. Therefore this court held that, even though such guidelines are non-statutory, the Selection Committee is not competent to frame its own Rules, but to follow the guidelines. Hence the selection and appointment of Shri. Biju Justin was quashed. This court remitted the matter for fresh decision of the Syndicate in accordance with law. It was specifically ordered that the Syndicate should ask the present Selection Committee or a new Selection Committee to be constituted, as the case may be, to make fresh

selection following the guidelines prescribed by the Academic Council and to make recommendations within three months. The Syndicate was directed to pass appropriate orders for appointing suitable candidate, within one month thereafter.

3. Shri. Biju Justin had filed Writ Appeal No.1592/2003 against the above judgment. The Writ Appeal was dismissed confirming the judgment of the Single Judge. Consequently, service of Shri.Biju Justin was terminated based on a decision taken by the Syndicate on 16.11.2004. Thereafter in compliance with the directions contained in the judgment a fresh interview was conducted on 10.1.2005. In the meanwhile a Review Petition filed by Shri. Biju Justin against the judgment in the writ appeal was also dismissed. In the interview conducted on 10.1.2005 the petitioner and Shri. Biju Justin alone have participated. The Selection Committee refused to record/award any marks to both the candidates, alleging that both of them were not found suitable to be appointed. According to the petitioner the decision of the Selection Committee was

totally perverse, unreasonable and arbitrary. The Selection Committee had recommended for re-notification of the post. The Syndicate of the University had accepted the recommendation as per Ext.P9 Minutes, in its meeting held on 29.1.2005. Accordingly a fresh notification was published on 18.4.2005 (Ext.P10 in W.P.(C)15506/2005 and Ext.P3 in W.P.(C) 36116/2009). W.P.(C) 15506/2005 was filed challenging Ext.P9 decision taken by the Syndicate to re-notify the post and Ext.P10, the notification published.

4. Contention in W.P.(C).15506/2005 is that, as per Ext.P3 guidelines of the Academic Council the Selection Committee ought to have awarded separate marks for qualifications, publications, experience, additional degree etc. and separate marks should have been awarded for the interview. It is pointed out that the guidelines prescribe split up marks to be awarded for the qualifications of the candidates, depending on the rank secured by them for the Post Graduate Degree and about the additional marks to be awarded for qualifications like M.Phil, Ph.D etc. The recommendations of the Selection Committee for re-

notifying the post, without awarding any marks to the candidates depending on their qualifications and ranks obtained and without considering their comparative merits, was totally illegal and unsustainable, is the contention.

5. When W.P.(C)15506/2005 was admitted, this court on 24.5.2005 ordered as follows;

"petitioner is free to submit her application pursuant to Ext.P10, without prejudice to the contentions raised in this writ petition".

Subsequently the said order was modified by this court on 6.9.2005 as follows;

"University is free to proceed with the selection and to conduct interview of the candidates applied for the post pursuant to Ext.P10 notification. Petitioner also shall be allowed to participate in the interview. But the interview will be subject to the result of this writ petition. The result of the interview shall not be announced without further orders from this court".

6. During pendency of W.P.(C)15506/2005, presumably based on the interim order dated 6.9.2005, the University took steps to conduct interview on two occasions. But the interviews scheduled were adjourned without intimating any reasons. Despite the interim order dated

6.9.2005, the matter was kept pending indefinitely till the year 2008. On 29.7.2008 the University issued yet another fresh notification inviting applications to the post in question, without waiting for disposal of W.P.(C) No.15506/2005 and without cancelling Ext.P10 notification. The petitioner submitted a representation before the Registrar of the University pointing out that the said notification is illegal and is without any authority and requested to withdraw the same to the extent it relates to selection to the post of Lecturer in English reserved for Latin Catholic/Anglo Indian. Thereupon the University issued Ext.P8 Memo (in W.P.(C) 36116/2009) dated 11.11.2008 calling upon the petitioner to attend an interview scheduled on 22.11.2008. In Ext.P8 Memo specific reference was made to the interim order in W.P.(C) 15506/2005, dated 6.9.2005. Based on Ext.P8 Memo the petitioner appeared for the interview on 22.11.2008. The petitioner sought information under the RTI Act regarding details of all the candidates applied on the basis of both the notifications, dated 18.4.2005 and 29.7.2008. But the

request was declined by the 'Public Information Officer' of the University stating that W.P.(C)15506/2005 is pending and that the selection process in question has not been completed.

7. While matters stood as above, the petitioner came to know that the Syndicate had resolved to appoint the 3rd respondent in W.P.(C) 36116/2009, in its meeting held on 31.1.2009. Thereupon the petitioner submitted Ext.P11 before the Registrar pointing out that the decision would amount to contempt of court, because it will be violative of the interim order in W.P.(C) 15506/2005, dated 6.9.2005. Even though the University took a decision on 31.1.2009 to appoint the 3rd respondent, the matter was again kept pending, presumably on the basis of the above said letter of the petitioner. After about 7 months, Ext.P12 (in W.P.(C). 36116/2009) Memo of appointment was issued to the 3rd respondent on 28.8.2009. In W.P.(C) 36116/2009 the petitioner is challenging Exts.P3 and P6 notifications (dated 18.4.2005 and 29.7.2008) and Ext.P12 order of appointment issued in favour of the 3rd respondent.

8. In the counter affidavit filed by the University in W.P.(C)15506/2005 it is stated that, pursuant to judgments in O.P.No.16620/2002 and W.A. No.1592/2003, the Vice Chancellor of the University had constituted a fresh Selection Committee, consisting of himself as Chairman and 3 others as members, along with the Registrar of the University as Secretary. The Selection Committee had fixed the criteria to be followed in the interview for awarding of marks, in accordance with the guidelines prescribed by the Academic Council. But performance of both the candidates who attended the interview was very miserable and the Selection Committee had no other option than to resolve for a re-notification of the post. The Syndicate had approved the minutes of the Selection Committee, vide: its decision dated 29.1.2005. Contention is that, it is the discretion of the Selection Committee to assess capability and performance of the candidates subjectively, in order to reach at a conclusion. According to the University, the performance of the petitioner was very poor. For example it is pointed out that, to repeated questions made by the

Vice Chancellor as to why she had not pursued higher studies after the Post Graduation, the petitioner was stubborn in her answer that she was in search of a permanent position in some educational institutions. It is stated that the petitioner could not answer most of the questions asked by members of the Selection Committee also. According to the University, even though the Selection Committee had formulated criteria for awarding marks in accordance with guidelines prescribed by the Academic Council, the committee unanimously found that both the candidates were not suitable for selection, considering their performance in the interview. Hence the post was recommended for re-notification. It is further stated that, after evaluating both the candidates, the committee was in a dilemma since the performance of both the candidates were miserable to rank them for the post of Lecturer in the University Department.

9. In a statement filed by the Standing Counsel for the University in W.P.(C).36116/2009 it is admitted that the petitioner had secured 10th Rank in BA degree with 70.8%

marks and 1st Rank with gold medal in MA degree with 70.4% marks. It is stated that she had acquired the qualification of B.Ed degree with 2nd Rank with 83.2% marks and had also passed the National Eligibility Test (U.G.C). With respect to her experience, it is admitted that the petitioner was working as Lecturer in English under the Collegiate Education Department of the State Government, since 21.3.2005 onwards. It is specifically stated that the Selection Committee had not awarded any marks for the qualification, experience, additional degrees, publications and for the interview, as mentioned in the guidelines. Instead they only recommended to re-notify the post. It is stated that the Selection Committee is competent to judge as to whether the candidates are suitable for selection or not. The statement further proceeds on the basis that, even though this court allowed the University to proceed with the selection by conducting interview based on the notification dated 18.4.2005, it had stipulated that the interview will be subject to the result of the writ petition (W.P.(C) 15506/2005) and the University was restrained

from announcing results of the interview without getting further orders from this court. According to the University, Ext.P6 fresh notification was issued because the earlier notification dated 18.4.2004 became lapsed. Hence the University had taken a decision to conduct fresh interview by constituting a Selection Committee, based on the fresh notification, dated 29.7.2008, is the contention.

10. It is mentioned in the statement filed in W.P (c) No.36116/2009 that the petitioner was Rank No.3 and the 3rd respondent was Rank No.2 in the list prepared pursuant to the interview conducted based on the fresh notification. Since the candidate ranked as No.1 has not turned up to join duty, proposal for appointment of the 3rd respondent was placed for decision of the syndicate and she was appointed based on the decision taken by the Syndicate. It is stated that the selection was made strictly in accordance with the guidelines formulated by the Academic Council. It is contended that the petitioner, having been participated in the selection process, cannot turn around and challenge the notification. Since selection and appointment was already

made pursuant to the fresh notification issued on 29.7.2008, the earlier writ petition (W.P.(C)15506/2005) has become infructuous, is the contention.

11. From the facts illustrated as above it is evident that, with respect to the post in question the University had issued three notifications, on 8.5.2002, 18.4.2005 and 29.7.2008 (for easy reference these notifications are referred hereinafter as 1st, 2nd and 3rd notifications). Selection and appointment of Shri. Biju Justin, made on the basis of the 1st notification, was quashed by this court. This court directed the Syndicate to take a fresh decision based on the recommendations of the Selection Committee, after conducting fresh interview and selection, following the guidelines prescribed by the Academic Council. Directions contained in the judgment in O.P. No.16620/2002, which was confirmed in W.A No.1592/2003, is binding on the University. But the newly constituted Selection Committee, instead of evaluating merits of both the candidates who attended the interview had submitted its recommendations to re-notify the post, which was accepted by the Syndicate.

When the 2nd notification was challenged in W.P.(C) 15506/2005, this court permitted the petitioner to submit application, without prejudice to her contentions in the writ petition. Subsequently this court directed the University to permit the petitioner to participate in the interview, subject to the result of the writ petition, imposing a rider that the result shall not be announced without getting further orders. But, instead of conducting any interview based on the 2nd notification, the University had published a 3rd notification, after a long lapse of time.

12. Specific directions issued by this court in the earlier judgment was to conduct the selection based on the 1st notification, strictly in accordance with the guidelines formulated by the Academic Council. Ext.P2(a) (in W.P.(C) 36116/2009) is the guidelines with respect to selection of Lecturers, approved by the University based on the recommendations of the Academic Council. It specifically prescribes the method for awarding index marks at the time of selection. It stipulates that 40% marks should be assigned for qualifications, 15% marks should be assigned

for publications, 15% marks should be assigned for experience, 5% marks should be assigned for additional degrees and 25% marks should be set apart for interview. It further gives split up details of marks to be awarded for qualifications (split up of the 40% marks). It provides that, for securing First Class and above in PG degree 20 marks have to be awarded, for First Class with 1st rank 25 marks have to be awarded, for First Class with 2nd rank 23 marks have to be awarded and for First Class with 3rd rank 22 marks have to be awarded. Further it indicates that, for NET+M.Phil 5 marks, for NET+Ph.D 15 marks and for NET+Ph.D before 1993 10 marks and for conferred Ph.D 10 marks have to be awarded. The respondent University has no case that either the petitioner or the other candidate interviewed (Shri. Biju Justin) were not possessing any one of the prescribed qualifications to be appointed to the post. It is admitted that the Selection Committee has not awarded any marks even for their qualifications, publications, experience or additional degrees. On the other hand the Selection Committee found them as not suitable to be

appointed as Lecturer. Going by the guidelines, the petitioner ought to have been awarded 25 marks for the qualification of PG degree with First Rank. So also she was eligible for getting 5% additional marks for the B.Ed degree and also for getting additional marks for the experience she had in working as the Lecturer in the Collegiate Education Department. Therefore, stand taken by the Selection Committee that the petitioner and the other candidates were not found suitable for awarding with any marks, has no basis at all. It is pertinent to note that Shri.Biju Justin was a candidate selected and appointed earlier by the very same University for the very same post. So also the petitioner was included in the select list as Rank No.3 in the subsequent selection conducted by the very same University on the basis of the 3rd notification. Therefore there is absolutely no justification for the Selection Committee to observe that both the candidates were not at all suitable for appointment to the post of Lecturer. Question and answer of the petitioner illustrated in the counter affidavit filed in W.P.(C) 15506/2005 is to the effect that, the petitioner

answered that she had not pursued studies after her Post Graduation because she was in search of a permanent job in some educational institutions. In the opinion of this court, it cannot in any manner be treated as a negative answer based on which any disqualification can be attributed.

13. From the circumstances mentioned as above it is evident that the Selection Committee and the Syndicate had taken the decision to re-notify the post, only with an intention to circumvent the directions of this court. The University had clearly disobeyed or flouted the directions of this court which had attained finality and became binding on the University. Non-awarding of marks in the interview and the findings arrived to the effect that none of the candidates were not suitable for appointment, are patently illegal, improper, irregular and incorrect and it need to be considered as one vitiated by malafides. The 2nd notification issued based on such a decision cannot be sustained in any manner. Therefore challenge in W.P.(C) No.15506/2005 against the 2nd notification has to succeed.

14. It is pertinent to note that this court had issued two interim orders in W.P.(C) No.15506/2005. By the 1st order this court made it clear that the petitioner will be at liberty to apply for the post based on the 2nd notification, without prejudice to her contentions in the writ petition. Subsequently when the University took decision to proceed with the interview, this court allowed the petitioner to participate, subject to a rider that the result of the interview shall not be announced without further orders. There also it was clarified that the result of the interview will be subject to result of the writ petition. It is not denied by the University that interviews were scheduled on two occasions, subsequent to the above said order. There is no explanation forthcoming as to why those interviews were not conducted. However, after 06/09/2005 the matter was kept pending indefinitely till 29/07/2008. With respect to issuance of the 3rd notification the only explanation forthcoming is that the 2nd notification became lapsed. Learned Standing Counsel for the University submitted that normally the period of validity of any

notification is three years. But he is not in a position to point out any statutory provisions or even orders of the University prescribing such limitation. It is submitted that the University is following the Regulations framed the Public Service Commission, in the matter of validity period of notifications. When this court permitted the petitioner to submit application based on the 2nd notification and when this court permitted the University to proceed with the interview, there was no restraint imposed to proceed further with the selection. But the University had not conducted any interview or selection, presumably because this court had permitted the petitioner also to participate in the interview. Without conducting any interview the matter was kept pending indefinitely for a considerable period of about 3 years. It can only be presumed that the University was waiting for the period of three years to get lapsed. Attitude of the University is very evident from the circumstances and conduct that they have dropped further steps as and when this court permitted the petitioner to participate in the interview. Question remains as to

whether the University was legally justified in issuing a 3rd notification when the writ petition challenging validity of the 2nd notification was pending disposal before this court. Nothing prevented the University to seek permission from this court to issue a fresh notification, if they could not have continued with the selection process based on the 2nd notification. Evidently the University was following a hostile and vengeance attitude against the petitioner and was practicing crooked methods to see that the petitioner is in no manner considered for the selection. Presumably, such an attitude was adopted only because the petitioner had challenged the original appointment of Sri. Biju Justin and obtained a favourable verdict from this court. Considering the circumstances as narrated above, this court has no hesitation to hold that issuance of the 3rd notification and the selection and appointment made on basis of that notification was totally illegal, erroneous and improper.

15. It is pertinent to note that, after issuance of the 3rd notification the petitioner was invited to attend the

interview, even without her submitting any application responding to the said notification. From Ext.P8 Memo it is evident that the petitioner was invited for the interview based on the interim order of this court dated 06/09/2005. Evidently the University was aware that they were bound to allow the petitioner to participate in the selection process by virtue of the mandate of the interim order. At the same time the University had not obtained permission from this court to issue the 3rd notification. Even though the petitioner was allowed to participate in the interview, the selection conducted based on the 3rd notification cannot be sustained as legal in any manner. Candidates applied for the post based on the 3rd notification were not really entitled to be considered for the selection. Therefore, while considering validity of the 3rd notification, with no hesitation, this court has to hold that the 3rd notification published during pendency of the writ petition in a manner ignoring the interim orders passed by this court, is totally illegal and vitiated. Hence the 2nd writ petition (WP (C)No.36116/2009) also deserves merit and has to

succeed.

16. Even though this court found that both the writ petitions deserve merit and the challenges have to succeed, and that the 2nd and 3rd notifications are liable to be quashed, question remains as to whether this court would be justified in setting aside the appointment of the 3rd respondent in WP(C) 36116/2009. The 3rd respondent was appointed to the post in August 2009 and she is continuing since then. Learned counsel appearing for the 3rd respondent pointed out that there is no challenge raised against the process of selection through which the 3rd respondent was selected as Rank No.2. No challenge or contention is raised based on the inter-se merit between the petitioner and 3rd respondent. The 3rd respondent got the appointment only because the candidate ranked No.1. had failed to join duty. There is no error, irregularity, impropriety, favouritism or malafides alleged against the process of selection conducted and the appointment made. Learned counsel for the 3rd respondent contended that the 3rd respondent is a candidate duly applied and selected in

a proper manner, is the contention. Therefore the selection and appointment is not liable to be set aside, even if it is found that the notification inviting applications was issued in an improper or irregular manner.

17. On behalf of the 3rd respondent it was argued that the petitioner is estopped from challenging the selection made based on the 3rd notification, because she had willingly participated in the selection process. Learned counsel placed reliance on a decision of this court in **Ranjith v. Kannur University [2012(1)KLT 183]**. Referring to various decisions of the hon'ble apex court this court observed that, a candidate who participated in the selection process and appeared for interview and took a chance to get himself selected for the post, cannot turn around and subsequently contend that the process of interview or selection was unfair, only because he did not find himself to have emerged successful in the selection.

18. But in the case at hand, the petitioner had participated in the selection only during pendency of the writ petitions, without prejudice to the challenges against

validity of the 2nd and 3rd notifications. She had not applied to the post based on the 3rd notification. But this court permitted her participation without prejudice to the challenges, in the selection to be conducted based on the 2nd notification. The petitioner attended the interview pursuant to the 3rd notification, only because she was invited to the interview based on the interim order notwithstanding her submitting any application pursuant to the 3rd notification. It is evident from Ext.P8 Memo that specific reference was made to the interim order of this court dated 06/09/2005. But in the said interim order the petitioner was permitted only to attend interview proposed based on the 2nd notification. Under such circumstances, this court is not at all convinced that there exist any valid reason to hold that the petitioner is estopped from challenging the 3rd notification, based on which the selection was made .

19. Limitations of courts in interfering with matters of appointments, in exercise of judicial review, was highlighted on behalf of the 3rd respondent. Reliance was placed on a decision of the hon'ble Supreme Court in **Km.Neelima**

Misra v. Dr.Harinder Kaur Paintal and others (AIR 1990 SC 1402). It is held therein that, in the matter of appointments in academic fields the courts generally do not interfere. With respect to opinions expressed by experts, the courts should be slow to interfere, in the absence of malafides alleged. The court need only to see whether the appointment had contravened any statutory or binding rules or ordinances. In another decision of the hon'ble apex court in **Durga Devi and Another v. State of H.P and others [(1997) 4 SCC 575]** it is held that a decision of the selection committee can be interfered only on limited grounds such as, illegality or patent material irregularity in constitution of the committee or its procedure vitiating the selection or proved malafides affecting the selection etc. The court went wrong while sitting in appeal over the selection and in setting aside the same on the ground that comparative merits of the candidates as assessed by the court is different. So also in the decision in **Vijay Syal and Another v. State of Punjab and Others [2003 (9) SCC 401]** it is held that, normally

it is not for the court to sit in judgment over such assessment particularly in the absence of any malafides or extraneous considerations attributed and established. If the parties, knowing the criteria fixed for the selection and allocation of marks had participated in the interview, then it is not open to them to turn around and attack the very same criteria when they are not successful, is the dictum.

20. As contended by the 3rd respondent there is no challenge raised against the process of selection through which the 3rd respondent was selected and appointed. There is no contention that the selection committee had in any manner acted illegally or malafidely in deciding inter-se merit of the candidates. But that by itself will not prevent this court from considering the challenges raised against validity of the notification based on which the selection was conducted, especially when the selection was made during pendency of such challenge. Therefore the dictum contained in the rulings cited above cannot be made use in order to content that this court cannot interfere. When it is found that the notification itself, based on which the selection

was conducted is illegal, unsustainable and malafide, there is no impediments for this court to interfere.

21. Learned counsel for 3rd respondent argued that, if the petitioner had any opinion that selection process based on the 3rd notification was unsustainable, she should not have participated in the interview. Per contra, learned counsel for the petitioner contended that participation in the interview was only based on Ext.P8 Memo, in which the University had indicated that she was invited based on the interim order of this court dated 06/09/2005. Under such circumstances this court is not inclined to accept the contention that this court is restrained from interfering for the purpose of considering legality, validity and sustainability of the 2nd and 3rd notifications.

22. When confronted with the above said conclusions, learned counsel appearing for the 3rd respondent pointed out that the 3rd respondent was appointed as early as in the year 2009, based on a due selection conducted. Her appointment was approved by the authorities concerned and she had continued in the post. It is argued that, even

assuming (without admitting) that the notification based on which the selection and appointment was made is unsustainable, this court should examine whether it is justifiable at this distant point of time to set aside the appointment. Under such circumstances, this court should bear in mind enquiries in favour of the person those who got selection and who cannot be blamed for the irregularity committed in publishing the notification, especially when the procedure for selection is not vitiated, is the contention. It is argued that it will be wholly inequitable to set aside the selection in such circumstances, after a distant point of time. Learned counsel for the 3rd respondent had placed reliance on a Division Bench decision of this court in **Ajet Kumar and others V. K.V. Sunil Kumar and another (1993 (2) ILR Ker. 765)** and a Full Bench decision of this court in **Babu Raj V. State of Kerala (1994 (2) KLT 679 (FB))**. Observations contained in those decisions are to the effect that, the extra ordinary jurisdiction conferred under Article 226 is neither appellate or revisional, but it is only to advance substantial justice to parties when there is

any infraction of the statutory provisions or Rules. Even if any legal lacuna is traced in the impugned proceedings the discretionary power need not be exercised, unless such lacuna had resulted in substantial injustice to the parties concerned. Relying on the above dictum it is contended that the petitioner is employed as Lecturer in the Collegiate Education Department. She was not selected at any point of time to the post notified. Nor had she become a successful candidate for appointment to the post. Therefore disturbance of the 3rd respondent who was continuing since 2009 will result in substantial injustice, is the plea raised.

23. Referring to a decision of the hon'ble Supreme Court in **Beg Raj Singh V. State of U.P. And Others [(2003) 1 SCC 726]** it is pointed out that, the petitioner though entitled to relief in law may yet be denied relief in equity, because of the subsequent or intervening events between commencement of litigation and the date of its decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change

in law or circumstances. When it became inequitable to grant any relief to the petitioner over the respondents, because of balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment, the court should restrain. Reliance is also placed on the decision of the hon'ble apex court in **Abhay Kumar Singh and Others v. State of Bihar and Others [(2015) 1 SCC 90]**. In the said case, even after finding that the parties were wrongly selected, it was observed that termination of their service would be too harsh and they ought to have been given opportunity to serve even without benefit of the past service.

24. Contentions raised on behalf of the 3rd respondent were resisted by learned counsel for the petitioner citing a judgment of this court in W.P.(C) No.15991/2006 dated 14/06/2012. Almost in an identical situation action of the respondent University in re-notifying the vacancy without preparing any Rank List was held arbitrary and illegal. It was found that for an omission made by the University the petitioner therein should not be made to suffer and be

deprived of the fruits of the judgment. In order to rectify the mistake this court directed the University to implement the earlier judgment. In the said case, this court, even without considering the marks obtained in the interview, directed granting of full mark to the petitioner for the interview.

25. While considering the rival contentions this court is of the opinion that legal dictum canvassed by the counsel for the 3rd respondent has no bearing on the facts of the case at hand. Here is a case where the respondent University had acted in a totally illegal manner with malafide motives. Directions contained in the judgment in OP No.16620/2002 was flagrantly flouted by the Selection Committee as well as by the Syndicate in a malafide manner to see that the petitioner is not selected and appointed to the post in question. The decision impugned in W.P (c) No.36116/2009 and the 2nd notification issued based on such decision was already found as totally illegal, unsustainable and malafide. Therefore it has to be ordered that the University is at an obligation to rectify the mistake

by conducting selection based on the directions issued in the said judgment. In this respect the decision taken by the University to re-notify the post and the 2nd notification issued consequent to such decision, need to be quashed. Therefore all subsequent proceedings adopted by the University in again publishing a 3rd notification, after the lapse of considerable period, that too during subsistence of challenge against the 2nd notification before this court, cannot be sustained. Even if it can be accepted that there occurred no illegality or error in the process of selection conducted based on the 3rd notification, such selection cannot be sustained since the University went highly illegal, erroneous, improper and unreasonable and malafide in publishing the 3rd notification and in proceeding with the selection process on the basis of the said notification. Hence all the consequential decisions culminated in the preparation of the rank list and appointment of the 3rd respondent are liable to be held as illegal and unsustainable. Merely because the 3rd respondent has not in any manner contributed for such an erroneous decision, it

cannot be validated or justified or permitted to continue in force. Fact that the 3rd respondent was selected in the year 2009 and she was permitted to continue in the post or the fact that the petitioner was having other employment and is continuing as such, cannot be taken as grounds to deny relief to the petitioner. The equity principles contained has no bearing on the facts of the case at hand. It remains settled that a relief for which the petitioner is eligible for could not be denied because of any delay occurred in disposal of the case. No party to a litigation can be put to prejudice based on delay occurred in disposal of the case.

26. However, while appreciating the contentions raised on behalf of the 3rd respondent, this court consider it only reasonable and justifiable to protect her interest to the extent of restraining the respondent University from recovering and withholding any of the benefits already granted and due to the 3rd respondent based on the selection and appointment and based on her employment till termination. It is made clear that the respondent University is not entitled to make any recovery with respect to salary

and other emoluments paid to the 3rd respondent. She will be entitled to all such benefits till the date of termination to be effected on the basis of this judgment.

27. Under the above mentioned circumstances both these writ petitions are hereby allowed. Exhibit P9 decision (in W.P (c) No.15506/2005) taken by the Syndicate of the respondent University to re-notify the post of Lecturer in English reserved for Latin Catholic/Anglo Indian community and the consequential notification published on 18-04-2005 with respect to the said post are hereby quashed. The subsequent notification published on 29-07-2008, which is impugned in W.P (c) No.36116/2009 to the extent it invited applications for appointment to the post mentioned above is also quashed. Consequently the selection and appointment made in favour of the 3rd respondent in W.P (c) No.36116/2009, against the said post, will also stand quashed. The respondent University is hereby restrained from recovering salary and other emoluments already paid to the 3rd respondent from the date of her appointment. She will be entitled for all such benefits till her termination.

28. The respondent University is hereby directed to comply with the directions contained in the judgment of this court in OP No.16620/2002 by conducting selection to the post in question following the guidelines prescribed by the Academic Council of the University as per Ext.P2 (a) (in W.P (c) No.36116/2009), by constituting a new Selection Committee. The selection shall be made from among the 4 candidates who have applied to the post on the basis of Ext.P1 notification published by the University dated 08-05-2002. Needless to observe that, if no candidates other than the petitioner who had applied on the basis of the above said notification is not turning up to attend the selection process, the petitioner shall be appointed to the post in question.

Sd/-
C.K. ABDUL REHIM
JUDGE

SKV/MJL/AMG

True copy

P.A. to Judge