

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 5228 of 2015 (C)

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PETITIONER :

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MINU ELZA R AGED 26 YEARS  
ASSISTANT PROFESSOR, DEPARTMENT OF ECONOMICS  
FATHIMA MATHA NATIONAL COLLEGE, KOLLAM-691 001.

BY ADVS.SRI.ELVIN PETER P.J.  
SRI.T.G.SUNIL  
SRI.K.R.GANESH

RESPONDENTS :

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1. STATE OF KERALA,  
REPRESENTED BY SECRETARY,  
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,  
OFFICE OF THE DIRECTOR COLLEGIATE EDUCATION,  
THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,  
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,  
KOLLAM-691 001.
4. UNIVERSITY OF KERALA,  
REPRESENTED BY ITS REGISTRAR, KARIYAVATTOM,  
THIRUVANANTHAPURAM-695 581.
5. THE MANAGER,  
FATHIMA MATHA NATIONAL COLLEGE, KOLLAM-691 001.
6. THE PRINCIPAL,  
FATHIMA MATHA NATIONAL COLLEGE, KOLLAM-691 001.

R5,R 6 BY ADV. SRI.BABY ISSAC ILLICKAL  
R5,R 6 BY ADV. SRI.ISAAC KURUVILLA ILLIKAL  
R3 BY GOVERNMENT PLEADER SRI.P.V.ELIAS  
R BY SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

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- EXT.P1 – TRUE COPY OF NOTIFICATION PUBLISHED IN MALAYALA MANORAMA DAILY DATED 14.11.12.
- EXT.P2 – TRUE COPY OF M.A.DEGREE CERTIFICATE AWARDED TO THE PETITIONER BY THE PONDICHERRY UNIVERSITY.
- EXT.P3 – TRUE COPY OF NATIONAL ELIGIBILITY CERTIFICATE ISSUED BY THE UGC TO THE PETITIONER.
- EXT.P4 – TRUE COPY OF THE MINUTES OF THE MEETING OF THE SELECTION COMMITTEE-UNDER MERIT QUOTA.
- EXT.P5 – TRUE COPY OF THE MINUTES OF THE MEETING OF THE SELECTION COMMITTEE-UNDER COMMUNITY QUOTA.
- EXT.P6 – TRUE COPY OF SCORE SHEET OF APPLICANTS FOR THE POST OF ASSISTANT PROFESSOR IN THE DEPARTMENT OF ECONOMICS.
- EXT.P7 – TRUE COPY OF ORDER DATED 4.3.2013 ISSUED BY THE 5TH RESPONDENT.
- EXT.P8 – TRUE COPY OF ORDER DATED 24.10.2013 ISSUED BY THE UNIVERSITY OF KERALA.
- EXT.P9 – TRUE COPY OF STATEMENT PREPARED BY THE 6TH RESPONDENT AND FORWARD TO THE 3RD RESPONDENT.
- EXT.P10 – TRUE COPY OF G.O(MS) NO.87/2012/H.EDN. DATED 12.3.2012 ISSUED BY THE 1ST RESPONDENT.
- EXT.P11 – TRUE COPY OF COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT IN WP(C) NO.16104/2006 BEFORE THIS HON'BLE COURT.
- EXT.P12 – TRUE COPY OF MEMORANDUM OF THE MINUTES OF THE SELECTION COMMITTEE INCLUDING GOVERNMENT NOMINEE AFTER EFFECTING CORRECTION.
- EXT.P13 – TRUE COPY OF REPORT DATED 6.6.2014 ISSUED BY THE 4TH RESPONDENT.
- EXT.P14 – TRUE COPY OF REPORT DATED 20.1.2014 ISSUED BY THE 6TH RESPONDENT.
- EXT.P15 – TRUE COPY OF COMMUNICATION DATED 26.6.2014 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

WP(C).No. 5228 of 2015 (C)

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- EXT.P16- TRUE COPY OF REPORT DATED 26.6.2014 PREPARED BY THE 3RD RESPONDENT.
- EXT.P17- TRUE COPY G.O.(MS)NO.185/2015.H.Edn.DATED 29.01.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P18- TRUE COPY OF REPORT DATED 22.12.2014 ISSUED BY THE 3RD RESPONDENT.
- EXT.P19- REPORT DTD.24.1.2015 SENT BY THE 3RD RESPONDENT TO A QUERY RAISED BY THE 2ND RESPONDENT.
- EXT.P20- COPY OF LETTER DTD.23.12.2014 ISSUED BY THE 2ND RESPONDENT TO THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, KOLLAM.

RESPONDENTS' EXHIBITS :-

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- EXT.R3(a) : COPY OF THE LETTER DTD.6.6.2014.
- EXT.R3(b) : COPY OF THE LETTER DTD.16.6.14.
- EXT.R3(c) : COPY OF THE LETTER DTD.22.12.14.
- EXT.R3(d) : COPY OF THE POST ADALATH REVIEW.
- EXT.R3(e) : COPY OF THE SCORE SHEETS.

**ANIL K.NARENDRA, J.**

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**W.P.(C)No.5228 of 2015**  
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**Dated this the 31<sup>st</sup> day of July, 2015**

**JUDGMENT**

The petitioner, who is working as Assistant Professor in the Department of Economics in Fathima Matha National College, Kollam, a Private Aided College affiliated to the University of Kerala, has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P16 and P17 orders and seeking a writ of mandamus commanding respondents 1 to 3 to disburse the salary due to her in the category of Assistant Professor with effect from 4.3.2013, along with arrears and all other consequential benefits. The petitioner has also sought for other consequential reliefs.

2. Heard the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 to 3, the learned Standing Counsel for the 4<sup>th</sup> respondent University and also the learned counsel for respondents 5 and 6.

3. The sole issue that arises for consideration in this Writ Petition is the legality or otherwise of Exts.P16, P17 and P18 orders and whether the petitioner is entitled for approval of her

appointment as Assistant Professor in the Department of Economics in the Fathima Matha National College, on the basis of her ranking in Ext.P5 ranked list for merit quota.

4. Going by the averments in the Writ Petition, the 5<sup>th</sup> respondent, who is the Manager of the Fathima Matha National College (hereinafter referred to as 'the College') issued Ext.P1 notification dated 14.11.2012, inviting applications for appointment to the post of Assistant Professor in various Departments, including the Department of Economics, under merit quota as well as community quota. The petitioner possessed M.A. (Economics) with First Class from the Pondicherry Central University and has also passed the National Eligibility Test for Lectureship conducted by the University Grants Commission, which is evident from Exts.P2 and P3 certificates. Pursuant to Ext.P1 notification the petitioner submitted application for appointment to the post of Assistant Professor in the Department of Economics. On 9.2.2013, she appeared for an interview before the Selection Committee constituted in accordance with Statute 4 of Chapter II of the Kerala University First Statutes,

1979 (hereinafter referred to as 'the First Statutes'). Out of the 45 candidates who submitted applications pursuant to Ext.P1 notification for appointment to the post of Assistant Professor in the Department of Economics, 33 candidates including the petitioner appeared for the interview. The Selection Committee consisted of the 4<sup>th</sup> and 5<sup>th</sup> respondents, the nominee of the Government, the nominee of the Management, and also a Subject Expert. Since the petitioner belongs to Latin Catholic Community, she was entitled to be considered for appointment as Assistant Professor in Economics both under merit quota as well as under community quota. After completion of the selection process the Selection Committee prepared separate panels of candidates selected in the order of preference under merit quota and community quota. Ext.P4 is the copy of the minutes of the Selection Committee held on 9.2.2013, containing the panel of candidates selected in the order of preference under merit quota (hereinafter referred to as 'the ranked list for merit quota'). Ext.P5 is the copy of the minutes of the Selection Committee held on 9.2.2013, containing the panel of

candidates selected in the order of preference under community quota (hereinafter referred to as 'the ranked list for community quota'). The petitioner is Rank No.1 in both Exts.P4 and P5 ranked lists.

5. Smt.Stella.S is Rank No.3 in Ext.P5 ranked list for community quota, who finds no place in Ext.P4 ranked list for merit quota. As evident from Exts.P4 and P5 ranked lists, the minutes of the meeting of the Selection Committee were signed by the members of that committee, including Government nominee and also the Subject Expert from the 4<sup>th</sup> respondent University. Ext.P6 is the score sheet prepared by the Selection Committee showing the marks awarded to the candidates who appeared for the interview. A perusal of Ext.P6 would show that, the petitioner who is Sl. No.23 in the score sheet was awarded 59 marks. The candidate named Stella.S, who is included in Ext.P5 ranked list for community quota, Sl. No.40 in Ext.P6 score sheet, was awarded 48 marks. Two candidates, namely, Sri.Dickson David and Sri.Francis Assissi.T., who are Sl.Nos.10 and 12 in Ext.P6 score sheet, were awarded 49 marks

each. On the remarks column in Ext.P6 score sheet the marks awarded to them in the interview are shown 48.54 and 49.37, respectively.

6. Based on the ranking in Ext.P4 ranked list for merit quota, the petitioner was appointed as Assistant Professor in the Department of Economics by Ext.P7 order of appointment dated 4.3.2013 of the 5<sup>th</sup> respondent Manager and she joined service on 4.3.2013 itself. In accordance with Statute 14 of the First Statutes, the order of appointment has to be approved by the 4<sup>th</sup> respondent University. By Ext.P8 order dated 24.10.2013 of the 4<sup>th</sup> respondent University, the appointment of the petitioner as Assistant Professor in the Department of Economics was approved with effect from 4.3.2013. In Ext.P8 order of approval, the nature of the vacancy in which the petitioner got appointment is stated as 'retirement vacancy' of Sri.Paul Xavier.

7. Ext.P9 Statement of Workload prepared based on the students strength in the Department of Economics as on 1.11.2013 would show that, the total workload in that department was 155

hours per week. Ext.P9 statement would further show that, the number of sanctioned posts in the Department of Economics is 10 and that the Principal of the College is from the Department of Zoology. In Ext.P10 Government order dated 12.3.2012, the Government have fixed a uniform norms for the fixation of workload/teaching staff in the aided colleges in the State, as per which, for every 16 hours one post of Assistant Professor is permissible. The maximum number of period for direct teaching for the Principal of a Postgraduate/Undergraduate College is 3 to 5 hours per week. The minimum number of hours required for an additional post in a subject is 9 hours per week. Therefore, going by the norms prescribed in Ext.P10, the workload of 155 hours in the Department of Economics justified one additional post, namely, the 10<sup>th</sup> post of Assistant Professor. In paragraph 14 of Ext.P11 counter affidavit dated 19.7.2006 in W.P.(C).No.16104 of 2006 filed by Sri.A.R.Titus, who was a Senior Lecturer in the Department of Economics in the College, seeking an order for revising his salary in accordance with the UGC scale of pay, the Deputy Director of

Collegiate Education, Kollam, the 3<sup>rd</sup> respondent herein, has admitted that 155 hours of workload is available in the Department of Economics and that, the number of posts that can be sanctioned in the department are 10. According to the petitioner herein, her appointment on 4.3.2013 was in the 10<sup>th</sup> post available in the Department of Economics.

8. Going by the averments in the Writ Petition, in March 2013, three faculty members namely, Smt.Jessy Jacob, Smt.Dafne Joan D'Souza and Smt.Irin Vas G. retired from service. Thereafter, Sri.Francis Morris A. retired from service in March, 2014. After their retirement, Sr.Sindu P.J., who is Rank No.2 in Ext.P4 ranked list for merit quota, and Sri.Benjamin Varghese and Smt.Stella S., who are Rank Nos.3 and 4 respectively in Ext.P5 ranked list for community quota were appointed. Later, Sr.Sindu P.J. resigned from the College and joined another college. At present only 8 teachers are working in the Department of Economics, as against the sanctioned strength of 10 and the petitioner is 6<sup>th</sup> among the faculty in the order of seniority.

9. As borne out from the pleadings and documents on record, there arose some disputes in the matter of preparation of Ext.P5 ranked list for community quota, namely, the inclusion of Smt.Setlla S. in the said ranked list. When the proposals for approval of the appointment of Sri.Benjamin Varghese, Smt.Stella S. and Sr.Sindu P.J. were forwarded to the 4<sup>th</sup> respondent University, the University noticed scoring of marks in Ext.P6 score sheet. The University found that, Sri.Dickson David and Sri.Francis Assissi who appeared for the interview were awarded 49 marks each. However, in the score sheet the marks awarded to Smt.Stella.S for the interview was corrected from 6 to 8 thereby she was awarded total 50 marks. When the above discrepancy was noticed, the 6<sup>th</sup> respondent Principal was asked to clarify the same. In response to the same, the 6<sup>th</sup> respondent Principal forwarded Ext.P12 memorandum of correction of the minutes of the Selection Committee, signed by all members of the said committee on 18.6.2014, stating that a clerical error inadvertently occurred in the preparation of the ranked list and score sheet for the selection of

Assistant Professor in the Department of Economics. The marks granted to Smt.Stella for the interview was 8 and not 6 and therefore, the total marks awarded to Smt.Stella is 50 and not 48. Accordingly corrections are made in the score sheet. It is stated further in Ext.P12 that, both Sri.Benjamin and Smt.Stella secured 50 marks each (rounded). Actually Smt.Stella has 50.42 marks and Sri.Benjamin has 49.52 marks. Therefore, Stella's position was corrected as 3<sup>rd</sup> position and that of Benjamin as 4<sup>th</sup> in Ext.P5 ranked list. Since Sri.James Wilson secured only 48 marks, his name was deleted from Ext.P5 ranked list, as there are two other candidates with 49 marks. As borne out from Ext.P13 communication dated 6.6.2014 of the 4<sup>th</sup> respondent University addressed to the Government, on receipt of Ext.P12 the University vide letter dated 6.6.2014 informed the 6<sup>th</sup> respondent Principal that, the clarification offered cannot be accepted and that it has been viewed as a serious offence. The irregularity alleged to have been detected in awarding marks to Smt.Stella S. and the preparation of Ext.P5 ranked list for community quota was brought to the notice of the Government vide

Ext.P13 communication of the University.

10. The 6<sup>th</sup> respondent Principal vide Ext.P14 communication dated 20.1.2014 informed the 3<sup>rd</sup> respondent that, as per 'Post Adalath Review' the total workload in the Department of Economics is 155 hours. The Principal was a faculty of the Department of Economics and the division of workload was as follows; Total workload – 155 hours; Principal – 5 hours; and Balance – 150 hours (9 posts sanctioned). After the retirement of Mr.Paul Xavier, the Principal, there is no change in the workload and 10 posts are permissible for 155 hours. Ext.P16 enquiry report of the 3<sup>rd</sup> respondent dated 25.6.2014 would show that, the 3<sup>rd</sup> respondent conducted an enquiry on 24.6.2014 in relation to the preparation of Ext.P5 ranked list for community quota. A reading of Ext.P16 would indicate that, in the enquiry the 3<sup>rd</sup> respondent noticed certain corrections in respect of the marks awarded to Smt.Stella S. in Ext.P6 score sheet, based on which the total marks awarded to her was corrected as 50 instead of 48, and she was placed Rank No.3 in Ext.P5 ranked list for community quota, after placing Sri.Benjamin

Varghese in Rank No.4. Though the enquiry conducted by the 3<sup>rd</sup> respondent was in relation to the preparation of Ext.P5 ranked list for community quota, the 3<sup>rd</sup> respondent while submitting Ext.R3(c) report dated 22.12.2014 before the Government, stated that though the 4<sup>th</sup> respondent University has granted approval on 4.3.2013, for the appointment of the petitioner as Assistant Professor in the Department of Economics, based on her ranking in Ext.P4 ranked list for merit quota, there was no sufficient workload in the Department of Economics for making fresh appointment and as such the 3<sup>rd</sup> respondent has not granted any approval for her appointment and the said fact has already been intimated to the 2<sup>nd</sup> respondent. It was thereafter, the 1<sup>st</sup> respondent issued Ext.P17 order canceling the ranked list prepared on 9.2.2013 for appointment to the post of Assistant Professor in the Department of Economics. The 2<sup>nd</sup> respondent was directed submit a detailed report, along with the workload approved by the University. On receipt of such report, the 1<sup>st</sup> respondent was directed to consider whether the Management can be permitted to conduct fresh interview for preparation of fresh

ranked list.

11. As is obvious from a bare reading of Ext.P17 order, the 1<sup>st</sup> respondent has not found any illegality or irregularity either in the preparation of Ext.P4 ranked list for merit quota or in the marks awarded to any candidates included therein. The pleadings and documents on record make it explicitly clear that, the alleged irregularities in the preparation of Ext.P5 ranked list for community quota have absolutely no bearing in the preparation of Ext.P4 ranked list for merit quota. As I have already noticed, even the enquiry conducted by the 3<sup>rd</sup> respondent was in relation to the preparation of Ext.P5 ranked list for community quota. A bare reading of Ext.P18 reply given by the 2<sup>nd</sup> respondent to the Government, which has also been referred to in Ext.P17 order, would also make it explicitly clear that, the enquiry was in relation to the preparation of the ranked list for community quota. Further, the sole reason stated in Ext.P17 order, in so far as the appointment of the petitioner as Assistant Professor is concerned, is that the workload in the Department of Economics does not justify the sanctioning of 10<sup>th</sup> post to

accommodate her.

12. The stand taken in the counter affidavit filed on behalf of the 3<sup>rd</sup> respondent is that, the 4<sup>th</sup> respondent University vide Ext.R3 (a) letter dated 6.6.2014 has informed the Government certain irregularities noticed in the selection procedure and the clarification sought from the Management. As is obvious from a bare reading of Ext.R3(a) letter, the irregularities noticed therein are in relation to the preparation of Ext.P5 ranked list for community quota, in which Smt.Setlla S. was assigned Rank No.4. It was in view of Ext.R3(a) letter, the Government instructed the 3<sup>rd</sup> respondent to conduct an enquiry on the issue and submit a report. The 3<sup>rd</sup> respondent submitted Ext.R3(c) report stating that, though the 4<sup>th</sup> respondent University has granted approval on 4.3.2013, for the appointment of the petitioner as Assistant Professor in the Department of Economics, based on her ranking in Ext.P4 ranked list for merit quota, there was no sufficient workload in that department for making fresh appointment and as such the 3<sup>rd</sup> respondent has not granted any approval for her appointment. Relying on Ext.R3(d)

Post Adalath Review, the 3<sup>rd</sup> respondent would contend that, the total workload of the Department of Economics is 155 hours and the sanctioned posts are only 9. At the time of appointment of the petitioner, 9 persons were working in the Department of Economics and her appointment was against the 10<sup>th</sup> post. Therefore, 1<sup>st</sup> respondent issued Ext.P17 order canceling the ranked list prepared on 9.2.2013, for appointment to the post of Assistant Professor in the Department of Economics.

13. The fact that the total workload in the Department of Economics is 155 hours per week is admitted in the counter affidavit filed by the 3<sup>rd</sup> respondent. Ext.P9 Statement of Workload as on 1.11.2013 in the Department of Economics would show that, the number of sanctioned posts in that department was 10 and the Principal of the College was from the Department of Zoology. Going by the uniform norms for the fixation of workload/teaching staff prescribed in Ext.P10 Government order, for every 16 hours one post of Assistant Professor is permissible; maximum number of period for direct teaching for the Principal of a Postgraduate/Undergraduate

College is 3 to 5 hours per week; and the minimum number of hours required for an additional post in a subject is 9 hours per week. Out of the total workload of 155 hours, 144 hours is required for sanctioning 9 posts of Assistant Professor. The balance workload of 11 hours is sufficient to sanction the 10<sup>th</sup> post of Assistant Professor, since the minimum number of hours required for an additional post in a subject is only 9 hours per week. In paragraph 14 of Ext.P11 counter affidavit in W.P.(C).No.16104 of 2006, a writ petition filed by Sri.A.R.Titus, who was a Senior Lecturer in the Department of Economics, seeking an order for revising his salary in accordance with the UGC scale of pay, the 3<sup>rd</sup> respondent herein has admitted that 155 hours of workload was available in the Department of Economics and that, the number of posts that can be sanctioned in the department were 10.

14. It is relying on Ext.R3(d) Post Adalath Review, the 3<sup>rd</sup> respondent is contending that, though the total workload of the Department of Economics is 155 hours, the sanctioned posts are only 9. As is obvious from a perusal of the statement of workload in

Ext.R3(d), at the time of Post Adalath Review the Principal of the College was from the Department of Economics. The total workload in the department was 155 hours, out of which the workload of 144 hours was required for sanctioning 9 posts. Out of the balance workload of 11 hours, 5 hours was required for direct teaching for Principal, since the Principal was from the very same department and the balance workload of 6 hours was insufficient to sanction one additional post, since the minimum number of hours required for additional post in a subject is 9 hours per week. Therefore, 9 posts and one post of Principal were sanctioned in Ext.R3(d). But, when the Principal of the College is from the Department of Zoology, the total workload of 155 hours in the Department of Economics is sufficient for sanctioning 9 posts ( $16 \times 9 = 144$  hours) and the balance workload of 11 hours ( $155 - 144 = 11$  hours) is sufficient for sanctioning one additional post in that department, since the minimum number of hours required for an additional post in a subject is 9 hours per week.

15. During the course of arguments, the specific stand taken

by the learned Standing Counsel for the 4<sup>th</sup> respondent University is that, the workload in the Department of Economics is sufficient to sanction 10 posts and it was in such circumstances, the University by Ext.P8 order granted approval for the appointment of the petitioner as Assistant Professor in that department. As I have already noticed, a reading of Ext.P8 approval order issued by the 4<sup>th</sup> respondent University makes it explicitly clear that, the appointment of the petitioner was not against the newly created post but it was against the retirement vacancy occurred due to the retirement of Sri.Paul Xavier, who was working as the Principal of the College during Ext.R3(d) Post Adalath Review.

16. Along with the reply affidavit, the petitioner has produced Ext.P19 letter of the 3<sup>rd</sup> respondent dated 24.1.2015 addressed to the 2<sup>nd</sup> respondent in which it has been stated that, as on 30.4.2012, the date on which Sri.Paul Xavier retired from service, there were 10 teachers in the Department of Economics and salary was sanctioned to all 10 teachers. Ext.P19 was in reply to Ext.P20 letter of the 2<sup>nd</sup> respondent dated 23.12.2014 by which the 3<sup>rd</sup> respondent was

directed to report the total number of the teachers working in the Department of Economics till the retirement of Sri.Paul Xavier, i.e., till 30.4.2012, out of which how many teachers were sanctioned their salary. Ext.P19 cuts the very root of the case put forward by respondents 1 to 3 that, at the time of appointment of the petitioner as Assistant Professor in the Department of Economics, the workload in that department was not sufficient to sanction the 10<sup>th</sup> post in which she was appointed. If that be so, the finding to that effect in Exts.P17 and P18 is without any factual foundation and legally unsustainable.

17. The Government in exercise of the powers conferred under Section 83 of the Kerala University Act, 1974 made the Kerala University (Conditions of Service of Teachers and Members of Non-Teaching Staff) First Statutes, 1979 in respect of the conditions of service other than pension, provident fund, gratuity, insurance and age of retirement of teachers and members of the non-teaching staff in private colleges. Statute 14 of the First Statutes, which deals with approval of appointment reads thus;

**"14.** 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 posts in private colleges are in excess of the post 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 persons appointed against fresh vacancies, before the absorption of supernumeraries.”

18. In **State of Kerala and others v. Dr. Sina A.R. and others (2007 (3) KLT 355)** a Division Bench of this Court, after referring to the provisions under the University Act, Statutes and Ordinances, held that it is for the University to sanction the post as per clause (3) of Statute 14 of the Kerala University (Conditions of Service of Teachers and Members of Non teaching Staff) First Statutes, 1979 in the case of private colleges coming under the Direct Payment Scheme, depending upon the workload and staff pattern fixed by the University. Once University accords sanction of a post and grants approval depending upon the workload and staff pattern, the Deputy Director of Collegiate Education 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. If the University grants approval noticing that it is in accordance with the staff pattern and workload fixed by it, the Director of Collegiate Education or the officers concerned are obliged to make payment of salary as per the direct

payment scheme. The Division Bench has categorically held that, the power is therefore conferred on the Syndicate of the University to sanction the post and approve the same and the Deputy Director has to verify whether the post sanctioned/approved is in accordance with the staff pattern and workload fixed by the University and in doubtful cases he can take up the matter with the University.

19. As I have already noticed, in so far as the appointment of the petitioner as Assistant Professor is concerned, the sole reason stated in Ext.P17 order is that the workload in the Department of Economics does not justify sanctioning of 10<sup>th</sup> post to accommodate her. But, the specific stand taken by the 4<sup>th</sup> respondent University is that, the workload in that department is sufficient to sanction 10 posts and it was in such circumstances, the University by Ext.P8 order granted approval for the appointment of the petitioner as Assistant Professor. The documents on record, which I have already referred to, make it explicitly clear that, as on the date of appointment of the petitioner, there existed 10 teachers in the Department of Economics and all of them were sanctioned with their

salary. When the appointment of the petitioner is against the 10<sup>th</sup> post existing in the Department of Economics and the total workload of 155 hours per week is sufficient for 9 posts with workload of 16 hours per week and one additional post with workload of 9 hours per week, the finding in Exts.P17 and P18 that, the workload in that department was not sufficient to sanction the 10<sup>th</sup> post and as such her appointment against the 10<sup>th</sup> post is illegal, cannot be sustained. Once the 4<sup>th</sup> respondent University, based on the decision of its Syndicate which is the authority competent to sanction the post and to grant approval, grants approval for the appointment of the petitioner vide Ext.P8 order against a sanctioned post, respondents 1 to 3 have got a legal obligation to disburse the salary payable to the petitioner.

For the reasons stated above, Ext.P17 order dated 29.1.2015 of the 1<sup>st</sup> respondent to the extent of cancelling the appointment of the petitioner as Assistant Professor in the Department of Economics in the Fathima Matha National College, Kollam on the ground that, as on the date of her appointment there was no sanctioned post in

that department to accommodate her as Assistant Professor, and the finding to that effect in Ext.18 report dated 22.12.2014 of the 3<sup>rd</sup> respondent cannot be sustained. In the result, Ext.P17 order and Ext.P18 report to the extent indicated above are set aside and the 3<sup>rd</sup> respondent is directed to take necessary steps to sanction and disburse the salary payable to the petitioner, in terms of approval for her appointment granted in Ext.P8 order dated 24.10.2013 of the 4<sup>th</sup> respondent University, within a period of two months from the date of receipt of a certified copy of this Judgment, together with arrears. The Writ Petition is disposed of as above.

It is made clear that, this Court has not expressed anything on the irregularities alleged to have been detected in the preparation of Ext.P5 ranked list for community quota.

No order as to cost.

**ANIL K.NARENDRAN, JUDGE**

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