

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 9101 of 2014 (K)

PETITIONER(S) :

1. RIJU C.ISSAC,
ASSISTANT PROFESSOR, DEPARTMENT OF PHYSICS,
MAR ATHANASIOUS COLLEGE, KOTHAMANGALAM - 686 666.

2. KRISHNA PRASAD P.S.,
ASSISTANT PROFESSOR, DEPARTMENT OF PHYSICS
MAR ATHANASIOUS COLLEGE, KOTHAMANGALAM - 686 666.

3. JASSI J.,
ASSISTANT PROFESSOR, DEPARTMENT OF PHYSICS
MAR ATHANASIOUS COLLEGE, KOTHAMANGALAM - 686 666.

BY ADVS.SRI.BABU VARGHESE (SR.)
SRI.V.NARAYANA SWAMI

RESPONDENT(S) :

1. THE MANAGER, MAR ATHANASIOUS COLLEGE,
KOTHAMANGALAM - 686 666 (SECRETARY MAR ATHANASIOUS COLLEGE
ASSOCIATION
KOTHAMANGALAM)

2. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR
PRIYADARSHINI HILLS P.O., KOTTAYAM - 686 560.

3. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVT.
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

4. THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, PMG JUNCTION
THIRUVANANTHAPURAM - 695 033.

5. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
MARKET FED BUILDING, GANDHI NAGAR, KADAVANTHARA
ERNAKULAM, PIN: 682 020.

R1 BY ADV. SRI.GEORGE JACOB (JOSE)
R2 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
R5 BY ADV. GOVERNMENT PLEADER MA.A.FAYAZ (SR.)
R BY DR.P.LEELAKRISHNAN, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF THE MINUTES OF THE MEETING OF THE SELECTION COMMITTEE HELD ON 15/3/2011.

EXT.P2: TRUE COPY OF THE ORDER OF APPROVAL DATED 17/4/2012 IN FAVOUR OF 1ST AND 2ND PETITIONERS.

EXT.P2(A): TRUE COPY OF THE ORDER OF APPROVAL DATED 6/7/2012 GRANTED IN FAVOUR OF 3RD PETITIONER.

EXT.P3: TRUE COPY OF THE LETTER DATED 23/5/2011 FROM THE 1ST PETITIONER.

EXT.P4: TRUE COPY OF THE LETTER DATED 19/11/2012 FROM THE 5TH RESPONDENT ADDRESSED TO THE PRINCIPAL.

EXT.P4(A): TRUE COPY OF THE REPLY DATED 21/12/2012 GIVEN BY THE PRINCIPAL TO THE 5TH RESPONDENT.

EXT.P5: TRUE COPY OF THE LETTER DATED 11/10/2013 ISSUED BY THE 5TH RESPONDENT.

EXT.P5(A): TRUE COPY OF THE LETTER DATED 11/10/13 ADDRESSED TO THE PRINCIPAL.

EXT.P6: TRUE COPY OF THE LETTER DATED 18/12/2013 ADDRESSED TO THE PRINCIPAL.

EXT.P6(A): TRUE COPY OF THE RELY DATED 9/1/2014 GIVEN BY THE PRINCIPAL.

EXT.P7: TRUE COPY OF THE LETTER DATED 26/2/2014 SENT BY THE 5TH RESPONDENT.

EXT.P7(A): TRUE COPY OF THE REPLY DATED 10/3/2014 GIVEN BY THE PRINCIPAL

EXT.P8: TRUE COPY OF THE WORKLOAD IN THE DEPARTMENT OF PHYSICS.

EXT.P8(A): TRUE COPY OF THE STAFF FIXATION ORDER DATED 9/12/2010 ISSUED BY THE UNIVERSITY.

EXT.P8(B): TRUE COPY OF THE LIST OF TEACHING STAFF IN THE DEPARTMENT OF PHYSICS, AS ON JUNE 2011.

EXT.P9: TRUE COPY OF THE JUDGMENT DATED 22/7/2010 IN WPC NO.19644/10.

EXT.P10: TRUE COPY OF THE PROCEEDINGS DATED 15/11/13 DECLARATING THE PROBATION OF THE 1ST PETITIONER.

EXT.P10(A): TRUE COPY OF THE PROCEEDINGS DATED 15/11/13 DECLARATING THE PROBATION OF THE 2ND PETITIONER.

EXT.P10(B): TRUE COPY OF THE PROCEEDINGS DATED 15/11/13 DECLARATING THE PROBATION OF THE 3RD PETITIONER.
WPC NO.9101/2014

3.

EXT.P11: TRUE COPY OF THE LIST OF THE TEACHING STAFF AT THE RELEVANT TIME.

EXT.P11(A): TRUE COPY OF THE SALARY CERTIFICATE DATED 20/3/2014 IN RESPECT OF DR.MERCY V.JOHH.

EXT.P11(B): TRUE COPY OF THE SALARY CERTIFICATE DATED 20/3/2014 IN RESPECT OF SRI.SIBI K.S.

EXT.P11(C): TRUE COPY OF THE SALARY CERTIFICATE DATED 20/3/2014 IN RESPECT OF SRI.JOSE MATHEW.

EXT.P12: TRUE COPY OF THE LETTER DATED 10/6/2013 FROM THE 3RD RESPONDENT ADDRESSED TO 4TH AND 5TH RESPONDENTS

EXT.P13: TRUE COPY OF THE INTERIM ORDER DATED 26/10/1995 IN OP NO.16572/95.

EXT.P13(A): TRUE COPY OF THE INTERIM ORDER DATED 27/1/2011 IN WPC NO.666/2011.

EXT.P14: TRUE COPY OF THE JUDGMENT DATED 10/2/2011 IN WPC NO.30781/10.

EXT.P15: TRUE COPY OF THE STATEMENT SHOWING THE MANNER IN WHICH VACANCIES HAVE ARISEN AFTER DIRECT PAYMENT AGREEMENT.

EXT.16: COPY OF THE INTERIM ORDER DATED 8/4/2014.

EXT.P16(A): COPY OF THE LETTER NO. AC BII/3/8326/2010 DATED 5/8/2014 SENT BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.

EXT.17: COPY OF THE LETTER NO. AC.BII/3/8326/2010 DATED 5/8/2014 SENT BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.

EXT.P18: COPY OF THE LETTER NO. D4/5786 (6) 2013 DATED 18/10/2014.

EXT.P18 : ENGLISH VERSION.

EXT.P19: COPY OF THE INTERIM ORDER DATED 5TH NOVEMEBR 2014

RESPONDENT(S)' EXHIBITS
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EXT.R2(A): COPY OF THE LETTER NO. D4/5786/(4)2013 DATED 29/5/2014 BY THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, ERNAKULAM.

EXT.R2(B): COPY OF REPLY LETTER NO. AC.BII/3/8326/2010 DATED 5/8/2014 BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.

EXT.R2(C): COPY OF LETTER NO. D4/5786(4)/2013 DATED 18/6/2014 BY THE 5TH RESPONENT TO THE 2ND RESPONDENT.

EXT.R2(D): COPY OF THE LETTER NO. D4/5786/(5)/2013 DATED 18/10/2014 BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.

EXT.R2(E): COPY OF REPLY LETTER NO AC B2/3/8326/2010 DATED 25/11/2014 BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.

EXT.R5(A): COPY OF THE LETTER ISSUED BY THE 5TH RESPONDENT DATED 10/12/2014.

/TRUE COPY/

PS TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.9101 OF 2014

Dated this the 27th day of March, 2015

JUDGMENT

The petitioners are working as Assistant Professors in Mar.Athanasius College, Kothamangalam. They approached this Court seeking direction to disbursement of their salary and other allowances. This Court by an interim order dated 3/6/2014 directed the respondents to disburse the arrears of salary and allowances of the petitioners 1 and 2. In that interim order, the 3rd petitioner's right to claim salary and allowances is left open to be decided at a later stage. Hence, the only issue remains in this writ petition is with regard to the payment of salary payable to the 3rd petitioner.

2. This Court on 29/1/2015 passed another interim order. However, there is an inadvertent mistake in referring that 'clarification given by the Deputy Director of Collegiate Education' instead of mentioning it as 'the Deputy Registrar of University'. The fact remains that there was an approval from the University and the University has clarified the matter with

the Deputy Director of Collegiate Education.

3. The learned Government Pleader points out that taking into account the work load, there is no scope for 9th post to appoint the 3rd petitioner. It is also contended that they have taken up the matter with the University.

4. This Court, in many judgments, has taken the stand that once the approval is granted, the State has to pay the salary to the appointee. However, that may not preclude the Director of Collegiate Education in taking up the matter with the University. I am of the opinion that the interest of the State in this matter has to be safeguarded.

4. In view of the above facts and circumstances, this writ petition can be disposed of with the following directions:

i). In view of the fact that the interim order has been passed in the month of January itself, the 3rd petitioner shall be paid her salary from the month of January 2015 onwards.

ii). The Director of Collegiate Education shall conduct an enquiry as to the actual work load and verify the same after conducting the enquiry .

iii). The Principal concerned and the University shall co-operate with the Director of Collegiate Education in conducting

such enquiry.

iv). Enquiry, as stated above, shall be completed within a period of four months from the date of receipt of a copy of this judgment.

v). On completion of such enquiry, if it is found that there is an admissible post to appoint the 3rd petitioner, necessarily the entire arrears salary shall be paid to the 3rd petitioner within a further period of three months thereafter.

vi). The salary payable will be subject to the decision to be taken by the Director of Collegiate Education, after completing the enquiry.

vii). The Principal of the College shall submit the salary bill relating to the 3rd petitioner from the month of January onwards within two weeks from the date of receipt of a copy of this judgment. Thereupon, the payment shall be effected to the petitioner without any delay.

The writ petition is disposed of with the above directions.

Sd/-

A.MUHAMED MUSTAQUE,

Judge.

dpk

/true copy/ PS to Judge.

