

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

W.P.(C).No.16471 of 2012 (H)

PETITIONER(S):-

1. DR. SANTHOSH KUMAR.N.,
ASSOCIATE PROFESSOR,
DEPARTEMNT OF MECHANICAL ENGINEERING,
N.S.S. COLLEGE OF ENGINEERING, PALAKKAD-678 008.
2. DR.SUDHIR KUMAR R.
ASSOCIATE PROFESSOR (NC),
DEPARTEMNT OF MECHANICAL ENGINEERING,
N.S.S. COLLEGE OF ENGINEERING, PALAKKAD-678 008.
3. DR.JOLLY K.G.
ASSOCIATE PROFESSOR (NC),
DEPARTEMNT OF MECHANICAL ENGINEERING,
N.S.S. COLLEGE OF ENGINEERING, PALAKKAD-678 008.
4. DR.SURESH K.S.,
ASSOCIATE PROFESSOR (NC),
DEPARTEMNT OF MECHANICAL ENGINEERING,
N.S.S. COLLEGE OF ENGINEERING, PALAKKAD-678 008.
5. DR.SHAJI MOHAN B.,
ASSOCIATE PROFESSOR,
DEPARTEMNT OF MECHANICAL ENGINEERING,
N.S.S. COLLEGE OF ENGINEERING, PALAKKAD-678 008.

BY ADVS.SMT.V.P.SEEMANDINI (SENIOR ADVOCATE)

SRI.M.R.ANISON
SMT.T.B.REMANI
SMT.K.P.GEETHA MANI
SRI.P.N.APPUKUTTAN
SMT.P.A.RINUSA
SMT.ANNIE JACOB

RESPONDENT(S):-

1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM-695 001.
2. CALLICUT UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, UNIVERSITY CAMPUS,
THENHIPALAM, CALICUT-673 635.
3. THE DIRECTOR OF TECHNICAL EDUCATION
TRIVANDRUM-695 001.
- * 4. [N.S.S.COLLEGE OF ENGINEERING,
REP. BY ITS CHAIRMAN GOVERNING BODY,
N.S.S.ENGINEERING COLLEGE, NAIR SERVICE SOCIETY,
PERUNNA, CHANGANASSERRY-686 102].
- * ADDRESS OF 4TH RESPONDENT IS CORRECTED AS:-
N.S.S. COLLEGE OF ENGINEERING, PALGHAT,
REP. BY ITS CHAIRMAN, GOVERNING BODY,
NAIR SERVICE SOCIETY, PERUNNA
CHANGANASSERY - 686 102 -
AS PER ORDER DATED 20/07/2012 IN IA 9782/2012.
5. H.THAJUDHIN,
PROFESSOR, DEPARTMENT OF MECHANICAL ENGINEERING,
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.
6. JACOB P GOEORGE,
ASSOCIATE PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.
7. A.R.PETER,
ASSOCIATE PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.
8. DR.PRAKASH,
ASSOCIATE PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.
9. G.NANDAKUMAR,
ASSOCIATE PROFESSOR
DEPARTMENT OF MECHANICAL ENGINEERING
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.

10. E.JOHN THOMAS,
ASSOCIATE PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
N.S.S.COLLEGE OF ENGINEERING, PALAKKAD-678 008.

R1 & R3 BY GOVERNMENT PLEADER SMT.A.LOWSY.
R2 BY STANDING COUNSEL SRI.SANTHOSH MATHEW.
R4 BY ADV. SRI.P.GOPAL.
R5 TO R10 BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON 29-09-2015 DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXHIBIT P1. TRUE COPY OF THE "FACULTY LIST" OF MECHANICAL DEPARTMENT OF 4TH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE RELAVNAT PAGES OF GOVT. LETTER DATED 28/2/1989.
- EXHIBIT P3. TRUE COPY OF THE RELEVANT PAGES OF THE G.O.(P) NO.81/90/H.EDN. DATED 27/3/1990.
- EXHIBIT P4. TRUE COPY OF THE LETTER DATED 9/10/1998 ISSUED BY THE CENTRAL GOVERNMENT.
- EXHIBIT P5. TRUE COPY OF LETTER DATED 15/3/2000 ISSUED BY AICTE.
- EXHIBIT P6. TRUE COPY OF G.O.(P) 68/H.EDN. DATED 18/5/2000.
- EXHIBIT P7. TRUE COPY OF G.O.(RT) NO.341/2012/H.EDN DATED 21/2/2012.
- EXHIBIT P8. TRUE COPY OF RELEVANT PAGES OF AICTE REGULATION DATED 5/3/2010.
- EXHIBIT P9. TRUE COPY OF RELEVANT PAGES OF G.O.(P)389/H.EDN DATED 7/12/2010.
- EXHIBIT P10. TRUE COPY OF RELEVANT PAGES OF AICTE FACULTY NORMS 2011-2012.
- EXHIBIT P11 TRUE COPY OF G.O.(Rt.) NO.1940/12/H/EDN. DT.18/09/2012.
- EXHIBIT P12 TRUE COPY OF JUDGMENT DATED 19.02.2010 IN W.P.C.NO.6558 OF 2008-E.
- EXHIBIT P13 TRUE COPY OF THE RELEVANT PAGES OF THE AMENDED REGULATION ALONG WITH UNIVERSITY NOTIFICATION NO.3696/GA-1-F1/2013/CU DATED 26.02.2014.
- EXHIBIT P14 TRUE COPY OF G.O.(P) NO.6/2003/H.EDN. DT.24.01.2003.
- EXHIBIT P15 TRUE COPY OF JUDGMENT DATED 28.05.2012 IN WITHDRAWING W.A.NO.2711/2009 AND CONNECTED CASES.
- EXHIBIT P16 TRUE COOPY OF G.O.(Rt.).NO.341/2012/H/.EDN. DATED 21.02.2012.
- EXHIBIT P17 TRUE COPY OF THE G.O.(MS) NO.26/09/H.EDN. DT.9.2.2009.

RESPONDENTS' EXHIBITS:-

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- | | |
|---------------|--|
| EXHIBIT R8(a) | TRUE COPY OF THE GAZETTE NOTIFICATION
DATED 27.10.2009. |
| EXHIBIT R8(b) | TRUE COPY OF THE RELEVANT EXTRACT OF THE
AMENDMENTS TO REGULATIONS. |
| EXHIBIT R8(c) | TRUE COPY OF THE RELEVANT EXTRACT OF
THE AMENDMENTS. |

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.16471 of 2012-H

Dated this the 29th day of September, 2015

JUDGMENT

The petitioners, Associate Professors in the 4th respondent-College affiliated to the 2nd respondent-University, is aggrieved by the fact that the party-respondents 5 to 10 are continued in their respective posts without a Ph.D degree, which, according to them, is an essential qualification as prescribed by the All India Council for Technical Education [for brevity "AICTE"]. The service details of the petitioners and the respondents 5 to 10 are as under:

Petitioners

Sl. No.	Name of Faculty	Qualification	Date of joining	Date of promotion as Assistant Professor/ Associate Professor (Cadre)	Date of Promotion as Professor (Cadre)	Date of acquiring PhD
1	Dr.Santhosh Kumar.N	PhD	10-07-1986	01-06-2006/ 01-06-2006	27-02-2015	25-07-2008
2	Dr.Sudhirkumar R	PhD	14-08-1989	01-06-2013		13-12-2008
3	Dr.Jolly K.G.	PhD	16-11-1989	01-11-2013		30-03-2009
4	Dr.Suresh K.S.	PhD	04-11-1991			10-12-2008
5	Dr.Shaji Mohan B	PhD	30-10-1998			20-07-2012

Respondents

Sl. No.	Name of Faculty	Qualification	Date of joining	Date of promotion as Assistant Professor/ Associate Professor (Cadre)	Date of Promotion as Professor (Cadre)	Date of acquiring PhD
5	H.Thajudeen	M.Tech	15-10-1982	01-01-2006	Feb. 2012	NIL
6	Jacob P.George	M.Tech	23-08-1984	01-06-2000/ 01-01-2006	Not promoted due to retirement on 31.03.2013	NIL
7	A.R.Peter	M.Tech	18-09-1984	June 2001/ 01-01-2006	01-11-2013	NIL
8	Prakash.D	M.Tech	03-09-1985	June 2002/ 01-01-2006	01-04-2014	NIL
9	Nandakumar G	ME	01-07-1986	02-03-2006/ 02-03-2006	N.A.	NIL
10	John Thomas E	M.Tech	22-09-1987	Dec.2007	N.A.	NIL

2. The learned Senior Counsel for the petitioners specifically refers to Exhibit P2 issued by the Government of India [for brevity “GoI”], Ministry of Human Resources Development invoking the power under Entry 66 List I of Seventh Schedule of the Constitution of India, determining the standards in institutions for higher education and technical institutions; wherein the essential qualification for the post of a Professor was prescribed as Ph.D with First Class Degree at the graduate level or the post-graduate level.

Exhibit P2 was in implementation of a scheme of the AICTE and the Central Government intended assistance to be granted to the State Governments, who wish to adopt the scheme of revised scales of pay for teachers in the Engineering Colleges. The assistance, as indicated in Exhibit P2, was to the extent of 80% of expenditure involved in granting such revision of scales of pay for the period between 01.01.1986 to 31.03.1990. Clause-6 of Exhibit P2 mandated that the operation of the scheme is subject to the conditions attached thereto; *inter alia* implementation by the State Government without any modification and the institutions obliged to make necessary changes in the statutes, ordinances, rules, regulations, etc. to incorporate the provisions of the scheme. Exhibit P3 is the order by which the Government accepted the scheme in toto. It was also declared that the appointments in Engineering Colleges after 1990 will be in accordance with the qualifications prescribed by AICTE. The stipulation with respect to Ph.D as an essential qualification for a Professor was stated in Annexure-III to Exhibit P3 and the other stipulations stood reiterated.

3. Exhibit P4 was in implementation of a subsequent scheme, which also guaranteed financial assistance as indicated earlier for the period from 01.09.1996 to 31.03.2000. By Exhibit P5 dated 15.03.2000, the AICTE brought in a Regulation by which the

essential qualification of an Assistant Professor also was stipulated as Ph.D. Hence, the educational qualification of the Professor and Assistant Professor were equalised by Exhibit P5 in 2000; but, however, with different years of experience stipulated for each. By Exhibit P6, the revision of scales of pay of teachers in Engineering Colleges on implementation of a similar scheme recommended by the AICTE and approved by the GoI was again accepted in toto, by the State Government.

4. It is also contended that, despite such stipulations having been insisted upon by the AICTE, the Government of Kerala failed to bring in necessary amendments to the regulations. In the year 2003, specifically on 24.01.2003, Special Rules were brought in, providing Ph.D as an essential qualification of Professors and Assistant Professors; but, however, with a rider insofar as the persons who are appointed prior to 27.03.1990. This rider was brought in by an amendment to the Special Rules, incorporating Rule 6A on 16.09.2004. The same was challenged in a batch of writ petitions, which writ petitions were allowed. The Government of Kerala as also the affected parties filed Writ Appeals. The Government of Kerala withdrew their appeals. Exhibit P7 is in implementation of the judgment of the learned Single Judge quashing Rule 6A of the Special Rules,

which implementation was made after withdrawing the appeals filed by the State. The State, hence, accepted the setting aside of Rule 6A of the Special Rules. The other appeals were dismissed confirming the judgment of the learned Single Judge setting aside the rider provided in the Special Rules, conferring benefit to those persons who have no Ph.D; but were continued in the post of Assistant Professors and Professors, against the clear stipulation by the AICTE, as approved by the Gol.

5. The judgment in W.A.No.956 of 2012 and connected cases dated 16.12.2013 is equally applicable herein and clause 5.7 of Exhibit P9 Government Order is unconstitutional and without authority to the extent the same protects or rather exempts those appointed from PSC/selection list valid as on 27.03.1990 from acquiring a Ph.D qualification, to adorn the post of Professor, is the compelling argument. Inconsistencies found as against Rule 6A of the Special Rules applicable to the Government Colleges in the aforesaid judgment is squarely applicable in the case of clause 5.7 of Exhibit P9. After setting aside the aforesaid clause; for it being inconsistent with the norms of AICTE, the learned Senior Counsel appearing for the petitioner would contend that there should be a direction to the University/State to make modifications in the Regulations so as to

comply with the norms of AICTE, without any violation thereof. The promotions made so far have also to be reviewed insofar as accommodating only Ph.D holders in the post of Associate Professors and Professors.

6. The learned counsel for the party-respondents, however, would contend that if at all the norms of the AICTE have not been complied with, then the AICTE or the Central Government could definitely take action against the University or the affiliated Colleges; but, however, the Regulations, as it exist, provide for an exemption so far as party-respondents who were appointed prior to 27.03.1990 are concerned and there could be no prayer sought for revamping the promotions already granted, since those were granted in accordance with the Regulations. It is also submitted that even the 1st petitioner was promoted as an Associate Professor prior to his acquiring Ph.D and if the contentions of the petitioners are found favour with, then the 1st petitioner's promotion as an Associate Professor should also be set aside. It is also pointed out that there is no challenge against the Regulations as such and in such circumstances none of the prayers of the petitioners could be granted.

7. The Standing Counsel for the University has furnished, across the Bar, a notification dated 26.02.2014, amending the

Regulations of the University relating to qualification, placement and promotion of University and College Teachers, finally approved by the Senate at its meeting held on 10.09.2013. Such regulations are substituted with effect from 30.07.2013. The qualification of Assistant Professors, Associate Professors and Professors in the University teaching department as also private aided colleges affiliated to the University have been prescribed in accordance with the norms of the AICTE. However, the party-respondents who do not have Ph.D qualification, but are promoted as Professors, would be protected insofar as Clause 15 of the above notification, which reads as under:

“(15) Where there are any provision in the Regulations inconsistent with the provisions in G.O.(P) No.58/2010/H.Edn. dated 27.3.2010 and G.O.(P) No.389/10/H.Edn. dated 7.12.2010, those provisions in the Government Orders would override the provisions in the Regulations to the extent of such inconsistency. Notwithstanding anything contained in the Regulations, only those benefits, both monetary and others, specified in the Government Orders would be receivable”.

The Government Order of 07.12.2010 referred to therein is Exhibit P9. The Government Order of 27.03.2010 is the implementation of the UGC Scheme by the Government of Kerala, which also provides so:

“5.2 No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a

Ph.D. and satisfies other academic conditions, as laid down by the University Grants Commission (UGC) from time to time. This shall, however, not affect those who are already designated as 'Professor'."

This is in tune with Exhibity P8 notification of AICTE.

8. As to the challenge made against clause 5.7 of Exhibit P9, the issue is no longer *res integra* and covered by the Division Bench judgment of this Court in W.A.No.956 of 2013. Clause 5.7 reads as under:

"No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D and satisfied other academic conditions, as laid down by the All India Council for Technical Education (AICTE) from time to time and/or notified by Government. **This shall, however, not affect those who are already designated as 'Professor' and those who were appointed from PSC Lists/Selection Lists which were live as on 27.03.1990 (Date of 1986 AICTE Order) in the case of appointments to Government College/ Private Adided Colleges respectively**".

9. Rule 6A of the Special Rules, which was the bone of contention in the afore-cited decision of the Division Bench reads as under:

"6A. *Exemption from qualification.*- (1) Candidates appointed as Lecturer in Engineering Colleges in the

Technical Education Department on or before the **27th March 1990**, who have completed 45 years of age on the date of notification published for filling up the posts of Professor, Joint Director (Engineering College Stream) and Director of Technical Education as the case may be **are exempted from acquiring Ph.D Degree for eligibility for the above posts.**

(2) Candidates applying for the post of Assistant Professor are exempted from possessing Ph.D Degree but they have to acquire Ph.D Degree within seven years of the appointment to the post of Assistant Professor as stipulated by the All India Council for Technical Education”.

10. Rule 6A as also the impugned clause in Exhibit P9 in the above writ petition provides exemption from obtaining Ph.D for Lecturers who are appointed on or before 27.03.1990; the date being that of Exhibit P3 order, implementing the scheme of AICTE. Suffice it to say, the Division Bench referred to ***Dr.Preethi Srivastava v. State of M.P.* [(1999) 7 SCC 120]** and ***State of Tamil Nadu v. S.V.Bratheep* [(2004) 4 SCC 513]**, and it was held so:

“62. In the light of the above discussions and reasonings State Government was under the obligation to implement the revised scheme of AICTE in toto which initially was implemented by the State Government, however, it was not justified in inserting Rule 6A to the Special Rules. Rule 6A is arbitrary and unreasonable as it creates a classification among the

similarly situated persons rather benefits a group of persons who are not having better qualification than the other group who have acquired better educational qualification.

63. The principles laid down in three Judges Bench decision and the Constitutional Bench followed by unreported decision referred to above clearly indicate the norms, if at all State or any authority authorised intends to form, can never be lesser than the norms fixed by the AICTE or the Council or the body meant for the particular purpose. It would not be invalid if the norms are higher than the minimum bench mark fixed by the concerned authority or the body. In the present case, introducing Rule 6A to the Special Rules is nothing but fixing the qualification norms much below the bench mark indicated by the AICTE, therefore, viewed from any angle, Rule 6A cannot be approved and it deserves to be quashed being repugnant to the norms fixed by the AICTE”.

The AICTE norms apply squarely to Government Colleges as also the private colleges who are affiliated to the University. In such circumstance, there can be no disparity in qualifications prescribed to particular posts in the technical institutions coming under AICTE; whether it be under the Government or under private managements.

The decision squarely applies to clause 5.7 and hence it has to be definitely struck down. I do so.

11. The contention of the party-respondents is that, the Regulations, if inconsistent with the AICTE norms, no fault can be found on the promotions made and based on the said regulations, such promotion has to be approved. Unless and until amendments, are brought in under the University Statutes and Regulations, the private colleges would be required to follow only the extant regulations. The party-respondents urged the said contention on the basis of the Bench decision of this Court reported in ***S.N.College v. N.Raveendran* [2001 (3) KLT 938]** and the decision of the Hon'ble Supreme Court in ***University of Delhi v. Raj Singh* [AIR 1995 SC 336]**.

12. The Regulations of the University, over the years, have been produced by the learned Senior Counsel appearing for the petitioner as a paper book. This has to be examined along with the norms prescribed by the AICTE, which is produced along with the writ petition. Exhibit P2 dated 28.02.1989, issued by the GoI was in pursuance of the recommendations of an Expert Committee appointed to make recommendations in respect of revision of salary structure, qualifications and conditions of service of teachers of technical institutions. The recommendations of the said committee as also those

made by the AICTE were examined and the decision to implement the scheme of revision of pay scales of teachers of Engineering Colleges and the Technical Institutions, including Librarians and Physical Education Instructors with effect from 01.01.1986, was the subject matter dealt with in Exhibit P2. As has been pointed out by the learned Senior Counsel, the Central assistance to the tune of 80% of additional expenditure for the period from 01.01.1986 to 31.03.1990 was on the specific condition that the scheme would be implemented in toto without modifications by the State Government. The State Government and the institutions were required to make necessary changes in their statutes, ordinances, rules and regulations, etc. to incorporate the provisions of the scheme.

13. At that point of time, the faculty posts available in the teaching stream in the Engineering Colleges were Lecturer, Assistant Professor and Professor. The necessary qualification for a Lecturer was First Class Bachelor's Degree and for an Assistant Professor a First Class Master's Degree with desirable qualification of Ph.D, while for the post of Professor, Ph.D., with First Class at the Bachelor or Master level was mandatory. Exhibit P3 dated 23.7.1990 of the Government of Kerala was in implementation of Exhibit P2 scheme; prescribing Ph.D with First Class Degree at Bachelor or Master level in

Engineering/Technology as essential qualification for appointment as Professor. The Regulations of the University of Calicut, amended and approved by the Academic Council at its meeting held on 14.05.1992, also provided for similar qualifications in the Engineering Colleges. There was no exemption from qualification in the said regulations.

14. Exhibit P4 dated 09.10.1998 and Exhibit P5 dated 15.03.2000 were issued respectively by the GoI and the AICTE, revising the pay scales further, from 01.01.1996; acceptance and implementation of which, by the Government of Kerala, is evident at Exhibit P6 dated 18.05.2000. The said implementation also provided for financial assistance from the Central Government for the additional expenditure at the rate of 80% for the period between 01.01.1996 to 31.03.2000. The Government Order also indicated that under Clause 3.10.5 in Exhibit P6 that the AICTE scheme should be implemented as a package and the stipulations on qualifications and method of recruitment should be strictly enforced by suitable amendment of the Special Rules and the University Statutes, wherever necessary. A significant departure from the earlier stipulation was that Ph.D was made a mandatory qualification for promotion/appointment to the post of Assistant Professor.

15. In Exhibit P5 the AICTE *inter alia* provided as follows:

“5.0. RECRUITMENT

xxx

xxx

xxx

a. There will be no relaxation of the prescribed educational qualifications, experience, etc.

15.0. OTHER TERMS AND CONDITIONS OF SERVICE OF TEACHERS:

15.1. General

xxx

xxx

xxx

b. The implementation of the revised scales will be subject to the acceptance of all the conditions mentioned in the scheme as well as of the other terms and conditions issued by the AICTE in this behalf.

c. The State Governments/Institutions are required to amend immediately their Statutes, Memorandum of Association, Rules/Schemes, Regulations, By-Laws, as the case may be, in line with the Scheme forthwith.

xxx

xxx

xxx”.

16. The University of Calicut brought out notification No.GA.II/HI/1752/96 dated 20.03.1999, again in consonance with the norms of AICTE, as accepted by the State Government; however with the following rider:

“In the case of teachers who are in permanent service as on the date of coming into force of this Regulations, they shall be deemed to be qualified for promotion to Assistant

Professor/Professors if they did possess the minimum qualification prescribed by the Regulations in force at the time of their appointment”.

This rider is against the specific terms of implementation of the scheme of the AICTE and the revision of salary effected by the Central Government, 80% of the additional expenditure of which, for a specific period, was also met by the Central Government; on the condition that the scheme would be implemented in toto.

17. However, the contention of the party-respondents that a Regulation in violation of the specific terms of implementation of the scheme could only lead to a punitive action by the Central Government or the AICTE, has to be accepted; respectfully following the above cited binding precedents. As the Regulations existed then, teachers who are in permanent service as on the date of coming into force of the Regulations of 1999, would be qualified for promotion to Assistant Professors/Professors, if they did possess the minimum qualification prescribed by Regulations in force at the time of their appointment. The regulations of the University dated 30.07.1992 did not provide for any such exemptions and mandated as essential, the qualification of Ph.D to be appointed to the post of Professor. The regulations of 20.03.1999, but, brought in the exemption by a Note.

18. The AICTE, by Exhibit P8 dated 05.03.2010, further amended the standards of qualifications applicable to Technical Institutions and Universities with change in designations of teachers as Assistant Professors, Associate Professors and Professors. The qualification for the Assistant Professors remained similar to that of the Lecturer. For Associate Professor and Professor, Ph.D was retained as an essential qualification. It is in implementation of the said Regulations of the AICTE that Exhibit P9 Government Order dated 07.12.2010 was brought in by the Government of Kerala, where in Clause 5.7 provided an exemption, as noticed herein above, for persons appointed prior to 27.03.1990.

19. The University Regulations also stood amended as per notification No.GA1/F2/3384/02 dated 18.09.2009, which was prior to Exhibit P8 notification of the AICTE. The University Regulations provided Ph.D qualification for both the posts of Professors and Assistant Professors. For appointment as Professors, a Note was provided, exempting the Lecturers appointed in Private Aided Engineering Colleges affiliated to the University on or before 27.03.1990 and who have completed 45 years of age from acquiring Ph.D qualification for filling up the post of Lecturer in the said colleges. This was in tandem with Rule 6A of the Special Rules. As far as

Assistant Professors, the Regulations of the University mandated that candidates already appointed as Assistant Professors are exempted from possessing Ph.D Degree; but were required to acquire the same within seven years of the appointment.

20. At this point, the 1st petitioner had already been appointed as Assistant Professor on 01.06.2006 as per the earlier Regulation of 1999, which did not require the qualification of Ph.D. As per the 2009 Regulations, it was provided that an Associate Professor should acquire the qualification of Ph.D within seven years of his/her appointment. The 1st petitioner had secured his Ph.D on 25.07.2008. Hence, as per the Regulations no infirmity can be found on his appointment as an Assistant Professor. The notification at Exhibit P8 of the AICTE, which re-designated Assistant Professors and Associate Professors; mandated Ph.D as an essential qualification for both; in the year 2010, by which time the 1st petitioner had acquired the qualification. Hence, the contention of the learned counsel for the contesting respondents that if the writ petition is allowed, this Court would have to necessarily interfere with the 1st petitioner's promotion is only to be rejected. This Court says so quite conscious of the fact that Ph.D was made mandatory for appointment/promotion to the post of Assistant Professor by Exhibit P5 in 2000, which post was

redesignated as Associate Professor . The finding however, is on the strength of the binding precedents above referred and the stipulation in the regulation of the University notified on 07.09.1999.

21. With respect to petitioners 2 and 3, they acquired the Ph.D qualification in 2008 and 2009 and were promoted as Associate Professor in the year 2013. The petitioners 4 and 5 are still languishing in the post of Lecturer, re-designated as Assistant Professor, despite having acquired the qualification of Ph.D. As to the party respondents, respondents 9 and 10 have been appointed as Assistant Professor/Associate Professor in 2006 and 2007. Even going by the Regulations of the University, they ought to have acquired the qualification of Ph.D within a period of seven years. The 10th respondent expired in 2014 and his promotion would stand unaltered, since none of his legal heirs have been impleaded. The 5th respondent was promoted as Assistant Professor on 01.01.2006 and Professor in February, 2012. The 6th respondent was promoted as Assistant Professor on 01.01.2006 and retired in March, 2013. The 7th respondent was promoted as Assistant Professor in June, 2001 and as Professor in November, 2013. The 8th respondent was promoted as Assistant Professor in June, 2002 and Professor in 2014. Basically the challenge in the writ petition are against the promotion of respondents

5, 7 and 8 as Professors respectively in 2012, 2013 and 2014, at which point the Regulations of 2009 was applicable and the Note with respect to exemption from Ph.D qualification saved such promotions. As is laid down in **Raj Singh** (*supra*) and **N.Raveendran** (*supra*), if at all the Regulations of the University are not consistent with the norms of the AICTE, that could attract only punitive measures; either by the Central Government or the AICTE.

22. Then comes the amendment notification No.3696/GA-1-F1/2013/CU dated 26.02.2014, which again amended the Regulations with effect from 30.07.2013. In the said Regulation, the exemption was provided by paragraph 15, extracted herein above. Clause 5.7 to the extent it grants exemption to those persons appointed prior to 27.03.1990 has been struck down by this Court in the earlier part of this judgment. It is to be noticed that there is no incorporation of the said exemption as was available by way of a Note in the 2009 Regulations. The 2014 Regulations render nugatory any provision in the said Regulation which is inconsistent with the provisions of the Government Order. The provisions of the Government Order to the extent of the exemption; having been set aside, the full rigour of the qualifications prescribed for the post of Associate Professor and Professor has to be applied. The Government Order of

27.03.2010 referred to in the 2014 regulation is of implementation of the UGC Scheme, which provide only exemption to Professors already appointed and so designated.

23. It is to be noticed that Exhibit P8 notification of the AICTE, dated 05.03.2010, provides that none shall be appointed, promoted or designated as Professor unless he/she possesses a Ph.D Degree and satisfies the academic qualifications; but, however, exempts those persons who are already designated as Professors. What is applicable to the Professors should also be logically made applicable to the Associate Professors. Hence, despite the change in Regulation as per Exhibit P8 brought in by the AICTE, persons who are appointed to the cadre of Assistant Professor earlier to the said notification is deemed to have been protected even if they do not have a Ph.D qualification as are the Professors so appointed prior to the notification. This is also the stipulation in the Government Order of 27.03.2010, which exempts Professors appointed and designated as such prior to that.

24. Again in 2012, when the 5th respondent was promoted, the Regulation in force was that of 18.09.2009; which exempted, by way of a Note, the candidates who were appointed as Lecturers on or before 27.03.1990 and who have completed 45 years of age, from

acquisition of Ph.D qualification. There being no specific challenge against the Regulations, the 5th respondent's promotion cannot be affected.

25. In the year 2013 and 2014 when the respondents 7 and 8 were promoted, the aforesaid Regulation of 2009 was in force. However, as of now the Regulation of 2014 has been made applicable retrospectively from 30.07.2013. The 2014 Regulation is effective from 30.07.2013 and provided that the Government Order would prevail over the provisions of the Regulations insofar as the qualification. On setting aside the exemption provided at Clause 5.7, of the Government Order, the rigour of qualification of Ph.D has to be made mandatory. In such circumstance, the promotion of respondents 7 and 8, being after 30.07.2013, would have to be reviewed by the University. The same shall be done within a period of two months from the date of receipt of a certified copy of this judgment.

26. In the result:

(i) The promotion of respondents 5 to 10 as Assistant Professor/ Associate Professor in 2006 and 2007 will not be interfered with, since the University Regulations at that point of time permitted it. Further even the AICTE Regulation of 2010 [Exhibit P8] permitted non-Ph.D holders who were promoted prior to that, to be continued so.

(ii) The promotion of 5th respondent to Professor shall not be interfered with since the same was in February, 2012 and the University Regulations permitted the same.

(iii) The promotion of respondents 7 and 8, being respectively on 01.11.2013 and 01.04.2014, shall be set aside, since they do not have the essential qualification of Ph.D and the University Regulation applicable as on 30.07.2013 insists for the same.

27. In the context of the findings entered herein and the violation of the norms in the implementation of the scheme, it is only proper that the Central Government and the AICTE be informed of the same. The Registry shall forward a copy of this judgment to the Ministry of Human Resources Development, Department of Education, Government of India, Shastri Bhavan, New Delhi - 110 001 and the All India Council for Technical Education.

The writ petition would stand partly allowed. Parties are directed to bear their respective costs.

vkul/-

Sd/-
K.Vinod Chandran
Judge.

[true copy]