

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

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

WP(C).No.22394 of 2013 (Y)

PETITIONER:

**SAJAN.M,S/O.PANKAJAKSHAN,'FOURESSESS',
KURUVA ROAD,KANNUR CITY P.O,KANNUR.**

BY ADV.SRI.M.V.AMARESAN

RESPONDENTS:

- 1. KANNUR UNIVERSITY,REP. BY ITS REGISTRAR,
MANGATTUPARAMBA,P.O.MANGATTUPARAMBA,
KANNUR DISTRICT,PIN-670567.**
- 2. REGISTRAR,KANNUR UNIVERSITY,
MANGATTUPARAMBA,P.O.MANGATTUPARAMBA,
KANNUR DISTRICT,PIN-670567.**

R1,R2 BY SRI.V.A.MUHAMMED,SC,KANNUR UNIVERSITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 1.4.2014 ALONG WITH WPC.31819/2013, THE COURT ON 27-03-2015,
DELIVERED THE FOLLOWING:**

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WP(C).No.22394 of 2013 (Y)

APPENDIX

PETITIONER'S EXHIBITS

- P1:- TRUE COPY OF NOTIFICATION BEARING NO.ACAD/B3/CTP/UGC/09
DTD 17/6/2010.**
- P2:- TRUE COPY OF NOTIFICATION RE-NOTIFICATION) BEARING NO.CAD/B3/
CTP/UGC/09 DTD 14/10/2010.**
- P3:- TRUE COPY OF CALL LETTER BEARING NO.ADB/APPOINTMENT/LR/BS/
2010 DTD KU CAMPUS 18/7/2011 ISSUED BY THE RESPONDENT TO THE
PETITIONER.**
- P4:- TRUE COPY OF THE JUDGMENT IN WPC NO.23387/10 DTD 18/7/2013
PASSED BY THIS HONOURABLE COURT.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

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C.K. ABDUL REHIM, J.

W.P.(C)Nos.22394 & 31819 of 2013

Dated this the 27th day of March, 2015

JUDGMENT

Since the issue involved in both these writ petitions pertain to the appointment of Reader and Lecturer in the respondent University based on the notification issued on 14/10/2010, they were considered together and disposed of through this common judgment. Reference to parties and exhibits contained hereinafter is in the order as contained in WP(C) No. 31819/2013.

2. The respondent University invited applications for appointment of Reader and Lecturer in different departments, by virtue of Ext.P1 notification, dated 17/06/2010. In Ext.P1, except six posts, all the vacancies were notified as temporary posts. A member of the Senate of the respondent University had challenged Ext.P1 notification in a writ petition filed before this court, WP(C) No.23387/2010. In Ext.P2 interim order passed by

this court the operation Ext.P1 notification was stayed to the extent it notified the temporary vacancies. This court clarified that, if the University is intending to make temporary appointments based on Ext.P1 notification, such appointment should not be regularised and the appointees should be intimated about the same. It was clarified that the University will be at liberty to issue fresh notification cancelling Ext.P1. Contention taken by the respondent University in WP(C) No.23387/2010 was that the temporary vacancies notified under Ext.P1 will be converted into permanent posts, on getting concurrence from the Government. Ext.P2 interim order was issued on 19/08/2010. Thereafter, the Government through Exts.P3 and P4 have accorded sanction to create 30 posts (2 Readers and 28 Lecturers). The University, after getting Ext.P5 legal opinion, have re-notified the posts including the 30 posts for which Government sanction was obtained along with the existing vacancies notified under Ext.P1. The petitioners in WP(C) 23387/2010 as well as

certain others have filed writ petitions before this court challenging Ext.P6 notification. A common interim order was issued by this court as per Ext.P7 on 23/12/2010, directing to keep in abeyance the final selection, till 31/01/2011. However the University went on with the selection process and conducted interview of candidates, during April and May 2011. In July 2013 the University moved before this court to get Ext.P7 interim order vacated. Accordingly on 8/07/2013 Ext.P9 common interim order was issued by this court vacating Ext.P7 interim order and making it clear that the respondent University will be entitled to fill up the permanent vacancies without any clubbing arrangement as contended in the writ petitions and by following the Rules and norms of reservation applicable for permanent vacancies. From Ext.P9 it is evident that, the University had submitted before this court that there are no temporary vacancies to be filled up as the entire temporary vacancies available had already been

exhausted. It was pointed out that, due to Ext.P7 interim order the University was prevented from filling up the permanent vacancies. It is on the basis of such a submission that this court was inclined to vacate Ext.P7 order. Subsequently, all the writ petitions challenging Ext.P6 notification was disposed of through Ext.P10, common judgment. This court observed that in view of Ext.P9 interim order no further order is required in the matter. Accordingly the writ petitions were closed leaving open all other contentions to be decided in appropriate proceedings. Averments in the present writ petitions is that, despite completion of the selection process based on the interview conducted, the Syndicate of the University in its meeting held on 31/12/2013 have decided to re-notify the teaching posts in view of Ext.P10 judgment and in view of the legal opinion given by the Standing Counsel, observing that the reservation norms will apply only to the permanent/regular vacancies. It is alleged that the

decision to re-notify posts were taken only because of the change occurred in the constitution of the Syndicate. It is contended that, the selection committee had completed all the formalities and a select list was prepared for appointment. Thereafter it is highly arbitrary on the part of the Syndicate to vary the decision taken earlier and to re-notify the posts. Ext.P11 is the extract of the Minutes which contained the impugned decision of the Syndicate of the respondent University. It is aggrieved by the said decision these writ petitions are filed. Relief to the extent of quashing Ext.P11 *inter alia* with direction to make appointment based on the selection made pursuant to Ext.P6 notification is the relief sought for.

3. Heard; Senior counsel Sri.C.P.Sudhakara Prasad appearing on behalf of petitioners in WP(C) No.31819/2013 and learned counsel appearing for the petitioner in the other case. Standing counsel appearing for the respondent University was also heard in the matter.

4. On behalf of the petitioners it is contended that, once the selection committee had completed the process of selection and made recommendations to the Syndicate, the Syndicate is bound to make appointment based on such recommendation. Statute 4 of Chapter III of the Kannur University First Statutes, 1998 enumerates the constitution of a selection committee for appointment of teachers, including the post of Reader/Lecturer. Statute 3 of Chapter III provides that recommendations of the selection committee shall be placed before the Syndicate, which shall make the appointments. The proviso to the said Statutes prescribes that when the Syndicate proposes to make appointments other than in accordance with the above said provision, the Syndicate shall record its reasons and shall submit its proposals for sanction of the Chancellor. Based on the above provision, it is contended that since the selection committee had finalised the select list based on Ext.P6 notification, the Syndicate was not competent to take a decision to re-

notify the post. In this regard, learned senior counsel had placed reliance on a decision of this this court in O.P.No.2123/1989 (judgment dated 12th October 1992). Referring to an identical provision contained in the Kerala University Statute, a learned judge of this court observed that the Syndicate is bound to record its reason for deviating from the recommendation of the selection committee and should submit the proposal for sanction of the Chancellor. Since no specific reason was mentioned by the Syndicate, the decision would violate the provisions contained in the Statute is the finding. In a later decision of this court in **Sobha B. Nair v. University of Kerala [2004(1) KLT 541]** it was observed that, when the selection committee exercises the deligatory powers conferred upon the Syndicate, it has to be deemed that the selection was carried out by the Syndicate itself. Once the selection is made by the committee, the Syndicate has to take follow up steps for appointing the persons concerned and it has no residuary

or other powers to reject the recommendation. The decision in **Sobha B.Nair's** case (supra) was followed in a recent decision rendered by learned judge of this court in WP(C) No.12874/2014, dated 03/12/2014. It is held that, when the recommendations of the selection committee is placed before the Syndicate, the Syndicate has to make appointment and there is no scope for deliberation or interpolation of opinions. No discretion has been conferred on them in this regard.

5. Another contention raised is against the reasoning mentioned in Ext.P11 for re-notification of the posts. It is pointed out by the learned senior counsel that the reasoning for re-notifying the posts mentioned is based on the High Court judgment and the legal opinion. But it is contended that the reservation norms applied with respect to all the vacancies notified under Ext.P6, was perfectly valid. It is pointed out that the University had adopted the provisions of the Kerala Service Rules, the Kerala State & Subordinate Service Rules 1958, and the

Kerala Government Servants Conduct Rules, 1960 etc. by virtue of Statute 9 of Chapter III of the Kannur University First Statutes, 1998. Therefore with respect to filling up of the vacancies the provisions contained in the Kerala State and Subordinate Service Rules (K.S & S.S.R) would apply. Rule 5 of part II of the K.S & S.S.R prescribes the method of recruitment. Note (1) appended to the said Rules provides that all permanent vacancies and temporary vacancies, except those of short duration, shall be treated as substantive vacancies. Note (2) indicates that the vacancies on account of leave and deputation with a duration of less than six months shall be treated as vacancies of short duration. It is pointed out that 2 vacancies included in Ext.P6 notification, other than permanent vacancies, were substantive vacancies arose due to long leave and deputation of two incumbents, which were extending to a period of more than six months. Therefore going by the provisions contained in K.S & S.S.R, read along with relevant

provisions contained in the First Statute of the University, there was no illegality or irregularity in notifying those 2 vacancies and the selection conducted was valid and proper, is the contention. Attention of this court is drawn to contentions raised by the respondent University in the counter affidavit filed by them in WP(C).No.23387/2010 (Ext.P17). It is specifically stated that leave vacancy notified under Ext.P6 was in the case of incumbent who availed leave without allowance for a period of 3 years and the deputation vacancy was with respect to deputation allowed for one year, which was applied to be extended further. Hence it is contended that those substantive vacancies are in the permanent cadre, which can be filled up by the University. The petitioners have relied on a Government circular dated 18/02/1999 in support of the contention that vacancies on account of leave and deputation with a duration of six months and above should invariably be reported to the Public Service Commission. Therefore it was contended that there was

absolutely no irregularity in the process of selection with respect to the teaching post notified under Ext.P6.

6. In a statement filed on behalf of respondents it is admitted that Ext.P6 notification contained one post of lecturer in Management Studies and one post of lecturer in Legal Studies, which are not permanent post. But it is stated that those vacancies have exhausted by the time and it was required to be re-do the communal rotation, after eliminating those posts. Hence it is contended that Ext.P6 notification could not be acted upon. Therefore the Syndicate had taken a decision to re-notify the post. The above contention was stoutly refuted by the petitioners, by filing an additional reply affidavit, referring to contentions raised by the University in the counter affidavit filed in WP(C)No. 23387/2010. In the reply affidavit filed by the petitioners on 28/01/2014 it is pointed out that the leave vacancy in the department of Management Studies arose pursuant to granting of Leave without allowance to one Mr.Mohammed Razik , for the

period from 01/12/2008 to 01/12/2011. Thereafter the above leave period was extended periodically till 11/11/2013, and he had not joined duty so far. Therefore it is contended that the said leave vacancy remained as a substantive vacancy under Rule 5 of the K.S & S.S.R. It is also contended that, apart from the above said leave vacancy another person, Dr.B.Rameswaran, who was working as Assistant Professor in the Management Studies in the respondent University had joined in the Calicut University and became a full member of that University. Hence there arose one more permanent post of lecturer in Management Studies. It is further stated that the deputation vacancy in the legal studies arose on 01/05/2010 and the incumbent in question who was sanctioned deputation is presently working as Pro Vice Chancellor of the Mahatma Gandhi University. Hence the said post also exists even now. Therefore it is contended that the permanent and substantive vacancies notified under Ext.P6 are liable to be filled up based on the

selection conducted.

7. There exists a dispute between the petitioner and the respondent University regarding completion of the selection process. The petitioner had produced Ext.P8 series documents to show that the selection committee had conducted the interview of the candidates. It is specifically averred that a select list was prepared by the committee constituted. Even though learned Standing Counsel disputed the above aspect, there is no specific averments denying such allegations. Going by Statute 3 of Chapter III of the First Statute, the Syndicate is bound to make appointment based on the recommendation of the selection committee. The proviso to Rule 3 insist upon the Syndicate to record its reasons for making appointment otherwise than in accordance with the recommendation and it insist to place any such proposal for sanction of the Chancellor. On a plain reading of the proviso to Statue 3 it would indicate that, placing of proposal for sanction of the Chancellor is contemplated

only when the Syndicate proposes to make the appointment otherwise than in accordance with the recommendation of the selection committee. Under normal circumstances the Syndicate is bound to make appointment based on the recommendation of the selection committee. Question remains as to whether the Syndicate is entitled to take a decision to cancel the selection process and to re-notify the post in question, after it received the recommendations of the selection committee. If for any reasons the posts notified became non existent, probably the Syndicate would be justified in making such a decision. But in the case at hand the reason mentioned in Ext.P11 is the judgment of this court in Ext.P10 and a legal opinion obtained based on such judgment. If the reasoning mentioned in the decision of the Syndicate is not acceptable or sustainable, definitely the mandate of Statute 3 would come to play and the Syndicate would be bound to make the appointment based on the recommendation of the selection committee.

Learned Standing Counsel for the University had raised a contention that there is no evidence nor even specific averments to the effect that the selection committee had placed its recommendation before the Syndicate. Even then this court can examine the question with respect to legality and sustainability of the decision taken by the Syndicate to cancel the selection process, especially when Ext.P11 decision is under challenge.

8. Therefore, question mooted for decision is as to whether the reasons mentioned in Ext.P11 to cancel the selection and to re-notify the post, is sustainable or not. It is evident that notification was initially issued clubbing together permanent and temporary vacancies. Out of the large number of posts notified in Ext.P1 only 6 vacancies were permanent vacancies. It is after considering the notification of temporary vacancies and the clubbing of those vacancies together with the permanent vacancies, this court had interfered in Ext.P2 order. This court ordered that the University will be at liberty to fill up the

temporary vacancies only after clarifying the same to the candidates and subject to condition that such appointees shall not be regularised at any point of time. Simultaneously the University was also given liberty to issue fresh proceedings. Evidently, the University had chosen to utilise the liberty reserved in Ext.P2 order and re-notified the posts in the permanent cadre, including the 2 substantive vacancies, as per Ext.P6. Stand taken by the University in Ext.P17 counter affidavit is to specific effect that the two substantive vacancies notified on account of leave and deputation are in the permanent cadre, which can be filled up by the University. The University had approached this court seeking vacation of Ext.P7 interim order based on the submission that there are no temporary vacancies to be filled up and that Ext.P7 interim order is standing in the way of filling up of permanent vacancies. Now the University is taking a turn around that what was intended by filling up of the permanent vacancies is only the filling up of vacancies

other than the two substantive vacancies. But such a contention was not seen raised either at the time of passing Ext.P9 interim order or when the cases were disposed of through Ext.P10 judgment. If the University had any opinion that reservation/rotation could not be finalised including the 2 substantive vacancies, they should not have sought for permission of this court to proceed with the selection based on Ext.P6. In such case, instead of that they should have cancelled Ext.P6 notification and re-fixed the reservation/rotation excluding the substantive vacancies. Since such a course was not seen adopted by the University, the stand taken in Ext.P11, that too after re-constitution of the Syndicate, cannot be accepted. A change in the constitution of the Syndicate would not entitle the University to modify its earlier decision and policies. The University is bound to implement its earlier decisions, even through the succeeding Syndicate, which is duty bound to continue and carry on the unimplemented decisions taken earlier.

The petitioner had placed reliance on various decisions of the hon'ble Supreme Court on the above aspect.

9. Since the University had excluded the temporary posts which were notified through Ext.P1, while publishing Ext.P6 notification, and since the University had taken a stand that the two substantive vacancies comes within the permanent cadre, it cannot be permitted to take a different stand. The reasoning mentioned to cancel the selection process pursued based on Ext.P6 notification, cannot be accepted. Since there is no specific refutation with respect to the contention that selection process was completed based on Ext.P6 notification and a select list was already prepared, this court is of the considered opinion that it is necessary to direct the respondent University to make appointment based on the selection conducted pursuant to Ext.P6 notification.

10. Therefore these writ petitions are allowed to the extent of quashing Ext.P11 decision of the Syndicate with respect to cancellation of selection made based on Ext.P6

notification and the decision taken for re-notification of the posts in question. The respondent University is directed to make appointments based on recommendation, if any received from the selection committee based on Ext.P6 notification. If the selection is not finalised on the basis of Ext.P6 it is directed to finalise the same and to make appointment based on the procedure already pursued. Appointment to the post notified in Ext.P6 shall be made depending on the ranking position in the select list, as well as based on the reservation/rotation, at the earliest possible, at any rate within a period of four months from the date of receipt of copy of this judgment.

**Sd/-C.K. ABDUL REHIM
JUDGE**

