

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 27873 of 2013 (H)

PETITIONER(S):

**DR.MINI N
ASSOCIATE PROFESSOR, DEPARTMENT OF MUSIC
KANNUR UNIVERSITY, SWAMY ANANDATIRTHA CAMPUS, EDAT P.O
PAYYANNUR, KANNUR -670 327.**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SRI.K.MURALIKRISHNA**

RESPONDENT(S):

**UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, UNIVERSITY BUILDINGS
THIRUVANANTHAPURAM - 693 034.**

R BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE NOTIFICATION NO. AD/AV/3/6158/2013 DATED 08/10/2013 OF THE REGISTRAR OF THE UNIVERSITY.**
- EXHIBIT-P2- TRUE COPY OF THE NOTIFICATION NO. A1.H1/406/2003 DATED 22/04/2003 OF THE REGISTRAR OF THE UNIVERSITY.**
- EXHIBIT-P3- TRUE COPY OF THE JUDGMENT DATED 16/06/2006 IN W.P(C) 13396/2006-T OF THIS HON'BLECOURT**
- EXHIBIT-P4- TRUE COPY OF THE JUDGMENT DATED 01/07/2009 IN W.P(C) CONTEMPT OF CASE (CIVIL) 507/2007 OF THIS HON'BLE COURT.**
- EXHIBIT-P5- TRUE COPY OF THE JUDGMENT DATED 10/03/2011 IN W.P(C) 32446/2010 OF THIS HON'BLECOURT**
- EXHIBIT-P6- TRUE COPY OF THE JUDGMENT DATED 25/10/2011 IN W.P(C) 924/2011 OF THIS HON'BLECOURT**
- EXHIBIT-P7- TRUE COPY OF THE ORDER DATED 17/07/2012 IN R.P 86/2012 IN W.A 924/2011 OF THIS HON'BLECOURT**
- EXHIBIT-P8- TRUE COPY OF THE APPLICATION DATED 26/06/2011 SUBMITTED BY THE PETITIONER BEFORE THE VICE CHANCELLOR OF THE UNIVERSITY.**
- EXHIBIT-P9- TRUE COPY OF THE FORWARDING LETTER NO. ACADB4/CTP/UGC-X/04(16) DATED 12/07/2013.**
- EXHIBIT-P10-TRUE COPY OF THE LETTER NO. AD.H/4180/2013 DATED 17/08/2013 OF THE RESPONDENT TO THE REGISTRAR OF KANNUR UNIVERSITY.**

RESPONDENT(S)' EXHIBITS

- EXT.R1(A) COPY OF THE NOTIFICATION NO.20614/LEG G2/2013/LAW DTD. 19.9.13 (ORDINANCE NO. 49 OF 2013)**

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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Dated this the 2nd day of November, 2015

J U D G M E N T

The issue agitated herein is a follow up of the earlier litigations by one another teacher qualified to be appointed and considered for an appointment, but allegedly not selected by the University. The earlier litigation was also with respect to the post of Professor in the Music Department, which arose in the year 2003. As per Ext.P2, a notification dated 22.04.2003 was issued. One Dr. B. Kumari Valsala, applied for the said post, but nothing was done, though a selection process was carried out. The University at that point of time, submitted that they are proceeding with the selection and would bring it to a logic conclusion at the earliest. The same was recorded in Ext.P3 judgment dated 16.06.2006, in which it was submitted that the Selection Committee was constituted. The writ petition was

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closed by order at Ext.P4 dated 01.07.2009.

2. D.r. B. Kumari Valsala having not been selected, despite the Selection Committee having considered her, she was before this Court with another writ petition, which concluded with Ext.P5. The Selection Committee had not recommended any of the persons, who had applied. The action of the Selection Committee was found to be illegal and there was a direction to constitute a fresh Selection Committee for conducting an interview in terms of the findings in Ext.P5. The said judgment was dated 10.03.2011. The University filed an appeal, which was dismissed by Ext.P6. Stringent observations were made insofar as, the Division Bench found that there was an attempt to exclude the person from the reserved category. The appeal was dismissed and selection process was directed to be completed within 15 days. A review filed by the said University was closed as per Ext.P7, since by that time the teacher had

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retired. Even then, nothing was done to make a proper selection.

3. The petitioner, who was working as an Associate Professor and Head of the Department, Department of Music, Kannur University was desirous of being either transferred to the respondent University as an Associate Professor or applying for the post of Professor. Dr. B. Kumari Valsala had retired and her claim no longer survived. Ext.P1 application for appointment of Associate Professor, Department of Music on deputation basis from qualified persons in Government or University, was challenged by the petitioner on the ground that the post of Associate Professor has to be filled up regularly. The petitioner cannot have any such claim since she could have applied as per Ext.P1 notification. Since there was a post of Professor, to which claim was raised by Dr. B. Kumari Valsala available and earmarked for Ezhava community, the petitioner also sought for filling up the said post regularly. This Court by an interim order

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dated 16.12.2013, directed that the post of Professor under the respondent, notified in 2003 and remaining unfilled shall not be filled up and the stay continued for all these years when the writ petition was pending here.

4. The petitioner cannot have any claim with respect to the post of Associate Professor notified as per Ext.P1, since she could have very well applied for a deputation as per Ext.P1 and she in any event is continuing as an Associate Professor in the Kannur University. However, with respect to the claim of the petitioner to the post of Professor, it is to be noticed that she cannot at best pray for a proper notification to be brought out.

5. The specific contention of the petitioner is based on the fact that the University has failed to comply with the consistent orders passed by this Court noticed herein above, wherein a vacancy earmarked for the Ezhava community is directed to be filled up by a due selection process. The

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petitioner also would rely on the observations of the Division Bench in Ext.P6, which indicates a deliberate exclusion having been made of the backward community. The petitioner's contention is that the post earmarked for the Ezhava community in the year 2003 has to be necessarily notified as one earmarked for the Ezhava community. The respondent however has produced an Ordinance at Ext.R1(a), which is stated to have been promulgated as an enactment in 2014. The adoption of the same and incorporation in the University statute is said to be pending consideration of the Syndicate.

6. It is pertinent that the Ordinance at Ext.R1(a) came into force even before the filing of the writ petition, by which there are provisions to pool the vacancies and apply reservation to the vacancies in various subjects on rotation. Hence the vacancy cannot at this stage be directed from a specified community. The Syndicate is said to have not yet decided on

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the adoption of the same. The decision cannot be kept pending indefinitely. In such circumstance, while making the interim order directing the post of Professor not to be filled up, till a decision is arrived at by the Syndicate, it is also directed that the University shall expedite the decision on the reservation to be applied to the posts and vacancies. Upon the Syndicate decision, the selection also shall be expedited and finalised within a period of six months from the date of such decision.

The writ petition would stand disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/03/11/2015

// true copy //

P.A to Judge.