

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 29542 of 2009 (K)

PETITIONER:

**DEEPA DEVI,
"PRANAVAM", B-32, PILLAVEEDU NAGAR,
KESAVADASAPURAM, THIRUVANANTHAPURAM.**

**BYSRI.P.RAVINDRAN (SENIOR ADVOCATE)
ADVS. SRI.P.DEEPAK
SMT.APARNA RAJAN**

RESPONDENT(S):

- 1. UNIVERSITY OF KERALA,
REPRESENTED BY ITS REGISTRAR,
THIRUVANANTHAPURAM.**
- 2. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF COLLEGIATE,
EDUCATION, KOLLAM.**
- 4. FATIMA MATA NATIONAL COLLEGE,
KOLLAM-691 001.**

**R1 BY ADV. SRI.M.RAJAGOPALAN NAIR,SC
R2 & R3 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R4 BY ADVS. SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN
SRI.JAMES JOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE NOTIFICATION PUBLISHED BY HINDU ENGLISH DAILY DATED 17.5.07.

EXHIBIT P2 : TRUE COPY OF THE DECISION OF THE SELECTION COMMITTEE DATED 14.9.09.

EXHIBIT P3 : TRUE COPY OF THE ORDER APPOINTING THE PETITIONER DATED 19.6.08.

EXHIBIT P4 : TRUE COPY OF THE COMMUNICATION OF THE UNIVERSITY APPROVING THE APPOINTMENT DATED 10.2.09.

EXHIBIT P5 : TRUE COPY OF THE REQUEST DATED 18.8.09.

EXHIBIT P6 : TRUE COPY OF THE COMMUNICATION DATED 14.9.09.

EXHIBIT P7 : TRUE COPY OF THE PROCEEDINGS DATED 22.6.09.

EXHIBIT P8 : TRUE COPY OF THE ORDER DATED 2.2.2010.

RESPONDENT'S EXHIBITS & ANNEXURES:

ANNEXURE R3(A) : COPY OF GOVERNMENT LETTER NO.12792/B3/93/HR.EDN. DATED 11.10.1993.

ANNEXURE R3(B) : D1/29375/08/COLL.EDN. DATED 18.8.2008.

/TRUE COPY/

P.S. TO JUDGE

mbr/

C.K. ABDUL REHIM, J.

W.P.(C)No.29542 of 2009

Dated this the 7th day of January, 2015

JUDGMENT

Grievance of the petitioner is regarding non-payment of salary for the period from 19/06/2008 to 01/07/2009, during when the petitioner had worked as Lecturer in the 4th respondent's college, pursuant to the selection and appointment made based on Ext.P1 Notification. Specific contentions are that, the appointment was made against a vacancy which arose consequent to retirement of an existing Lecturer and that the selection was made by a committee constituted for the said purpose, which included nominees of the University and the Government as members. The petitioner resigned from the service of the 4th respondent. But salary due to her for the above said period was not paid. When the petitioner submitted a request in this regard before the 4th respondent, Ext.P6 reply was issued stating that the 3rd respondent had rejected the salary bill submitted, stating the reason that

there existed no sufficient work load in the Department concerned to accommodate the petitioner. Ext.P7 is the endorsement made by the 3rd respondent while returning the salary bill in which it is stated that, as per the existing strength there is only vacancy for 3 Lecturers and therefore salary for the petitioner cannot be sanctioned. This writ petition was originally filed challenging Ext.P7. The 1st respondent University had filed a statement to the effect that, the 3rd respondent had addressed the University through a letter requesting to review the approval of the appointment of the petitioner, after verifying the work load. It is further stated that the 1st respondent had already forwarded a reply as per Ext.R1 (a) dated 23/11/2009, reiterating their stand that there was sufficient work load available to accommodate the petitioner. On the basis of the above said statement this court passed an interim order on 23/12/2009 directing the 3rd respondent to reconsider Ext.P7 and to take an appropriate decision within a period of 3 weeks. Ext.P8 is the consequential order passed by the 3rd respondent, again rejecting the salary to

the petitioner. In Ext.P8 it is stated that the calculation of staff strength made by the 1st respondent University is not correct in view of the conditions stipulated at the time of sanctioning the new course. It is pointed out that the additional post required for teaching the subject in question cannot be considered because the new course was sanctioned with a specific condition that there will not be any additional financial commitment on the part of the Government. Therefore the 3rd respondent found that the staff strength sanctioned by the university is not true and correct. By virtue of amendment brought into the writ petition, the petitioner is now challenging Ext.P8 proceedings also and *inter alia* seeking direction for disbursal of salary for the period during which she had worked.

2. In the counter affidavit filed on behalf of the 3rd respondent, the stand taken in Ext.P8 is reiterated. Question arises as to who is the competent authority to finalise the staff fixation with respect to private colleges coming under the direct payment system. Under Statute

14 of the Kerala University (Conditions of Service of Teachers and Members of Non-Teaching Staff) First Statutes 1979, it is mentioned that, approval of every appointment to the teaching post shall be made by the Syndicate of the University, subject to condition that the appointment is in accordance with the staff pattern fixed by the University, provided the person appointed is fully qualified for the post. There is no dispute in the case at hand that the appointment of the petitioner was approved by the University by accepting the fact that appointment was in accordance with the staff pattern fixed by the University. Sub-statute (2) of Statute 14 provides that the 3rd respondent has to verify before making direct payment of the salary as to whether the post for which the payment claimed is in accordance with the staff pattern and the work load fixed by the University. It further provides that any doubtful cases shall be referred to the University for clarification for ensuring correctness of the direct payment. It is not in dispute that the approval of the appointment was made on the basis of the work load

fixed by the University. Further it is not disputed that the appointment was made against a vacancy which arose consequent to retirement of an existing Lecturer and that the selection was made by a Committee consisting of nominees of the University and the Government. Therefore, going by provisions of the First Statutes, the Deputy Director cannot sit in judgment over the staff fixation approved by the University. It is also evident that the clarification sought for by the 3rd respondent was properly answered by the University as per Ext.R1(a). Therefore this court is of the considered opinion that the denial of approval for payment of the salary, stating that the staff fixation made by the University is not correct, is beyond the jurisdiction and power vested on the 3rd respondent. Hence Ext.P8 cannot be sustained in the eye of law.

3. Under the above mentioned circumstances the writ petition is hereby allowed and Ext.P8 is hereby quashed. The 3rd respondent is directed to issue necessary proceedings for approving payment of salary due to the

petitioner for the period during which she had worked as Lecturer in the 4th respondent's college, on the basis of the approval of her appointment by the 1st respondent University. Necessary steps in this regard shall be taken at the earliest possible, at any rate, within a period of one month from the date of receipt of copy of this judgment.

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

MJL