

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

W.P.(C).No.26273 of 2015 (H)

PETITIONER(S):-

DR. N. PRASANATHA KUMAR, AGED 57 YEARS,  
PROFESSOR AND HEAD OF THE DEPARTMENT OF ENGLISH,  
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,  
KALADY, PIN - 683 574.

BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SENIOR ADVOCATE)  
SRI.S.RAMESH  
SRI.NAVEEN.T  
SMT.POOJA SURENDRAN.

RESPONDENT(S):-

1. SREE SANKARACHARYA UNIVERSITY,  
KALADY, PIN-683 574, REPRESENTED BY ITS REGISTRAR.
2. THE VICE CHANCELLOR,  
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,  
KALADY, PIN-683 574.
3. DR. NISHA VENUGOPAL  
ASSOCIATE PROFESSOR OF ENGLISH,  
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,  
KALADY, PIN-683 574.

R1 & 2 BY STANDING COUNSEL SRI.ARUN B.VARGHESE.  
R3 BY ADV. SMT.KRIPA ELIZABETH MATHEWS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## APPENDIX

### PETITIONER(S)' EXHIBITS:-

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- EXT.P1- TRUE COPY OF THE ORDER DATED 15.6.2007 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2- TRUE COPY OF THE ORDER DATED 27.11.2012 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3- TRUE COPY OF THE ORDER DATED 25.5.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4- TRUE COPY OF THE ORDER DATED 21.3.2014 ISSUED BY THE 1ST RESPONDENT.
- EXT.P5- TRUE COPY OF THE COMMUNICATION DATED 7.8.2015 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P6- TRUE COPY OF THE ORDER DATED 24.8.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P7- TRUE COPY OF THE ORDER DATED 25.8.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8- TRUE COPY OF THE REPRESENTATION DATED 25.4.2015 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE CHANCELLOR.
- EXT.P9 - TRUE COPY OF THE NOTE TO SYNDICATE DATED 3.9.2015 REGARDING EXTS.P6 AND P7 GIVEN BY THE REGISTRAR OF THE UNIVERSITY.
- EXT.P10- TRUE COPY OF THE REPLY DATED 14.9.2015 ALONG WITH THE RELEVANT EXTRACT OF THE FILES GIVEN BY THE REGISTRAR OF THE UNIVERSITY.

### RESPONDENT(S)' EXHIBITS:-

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- EXT.R1(a) TRUE COPY OF THE JUDGMENT IN WP(C).NO.20294/2013 OF THE HONOURABLE HIGH COURT OF KERALA.
- EXT.R1(b) TRUE COPY OF THE EMAIL DATED 13.10.2014 SENT BY THE WRIT PETITIONER TO ALL THE SYNDICATE MEMBERS.
- EXT.R1(c) TRUE COPY OF THE LETTER NO.GS5-3712/14 DATED 18.2.2015 ISSUED BY THE HONOURABLE CHANCELLOR.

- EXT.R1(d) TRUE COPY OF THE EMAIL SENT BY THE WRIT PETITIONER TO THE PRO VICE CHANCELLOR.
- EXT.R1(e) TRUE COPY OF THE EMAIL DATED 19.5.2015 SENT BY THE WRIT PETITIONER TO THE PRO VICE CHANCELLOR.
- EXT.R1(f) TRUE COPY OF THE LETTER DATED 9.6.2015 SUBMITTED BY THE WRIT PETITIONER BEFORE THE PRO VICE CHANCELLOR.
- EXT.R1(g) TRUE COPY OF THE COMPLAINT DATED 14.7.2015 SUBMITTED BY GOPAKUMAR V.R. BEFORE THE REGISTRAR OF THE UNIVERSITY.
- EXT.R1(h) TRUE COPY OF THE ORDER NO.AcdB1/8602/SSUS/2015 DATED 31.7.2015 ISSUED BY THE UNIVERSITY.
- EXT.R1(i) TRUE COPY OF THE ORDER NO.10225/Ad.A3/SSUS/2015 DATED 26.8.2015 ISSUED BY THE UNIVERSITY.
- EXT.R1(j) TRUE COPY OF THE RELEVANT PORTION OF REGULATIONS OF M.A.PROGRAMS UNDER CREDIT AND SEMESTER SYSTEM.
- EXT.R1(k) TRUE COPY OF THE NOTE TO REGISTRAR AND THE COPY OF THE ORDER NO.Ad.B/TP2/SSUS/2014 DATED 27.10.2014 ISSUED BY THE UNIVERSITY.
- EXT.R1(l) TRUE COPY OF THE RELEVANT PORTION OF THE UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION 2010.
- EXT.R1(m) TRUE COPY OF THE RELEVANT PORTION OF THE EXTRACT OF THE MINUTES OF THE SYNDICATE MEETING HELD ON 15.09.2015.
- EXT.R1(n) TRUE COPY OF THE UNIVERSITY ORDER NO.10225/Ad.A3/SSUS/2015 DATED 22.9.2015 ISSUED BY THE FIRST RESPONDENT.

K. Vinod Chandran, J

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W.P.(C).No.26273 of 2015-H  
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Dated this the 28<sup>th</sup> day of September, 2015

**JUDGMENT**

The petitioner is aggrieved with Exhibit P7 order, by which he was communicated the decision of the Vice-Chancellor to remove the petitioner from the Head of the Department [for brevity "HoD"] of English, of the respondent-University. The petitioner, even when he was holding the post of Reader in English, was holding the charge of HoD, being the senior-most Lecturer in English available at the University Centre at Kalady, as is evidenced by Exhibit P1. The petitioner subsequently was promoted as Professor and continued as HoD of English as also was appointed as a Member of the Syndicate. The petitioner was also, for a period, in additional charge of Registrar.

2. While so, the petitioner's son had appeared in the Entrance Examination for admission to the M.A. [English] Programme, 2015 of the University. The petitioner is said to have requested to exempt him from the duties of Chief Superintendent and Chairman of the Entrance Examination and had proposed

the name of Dr.Ajay Sekhar, Assistant Professor, to be appointed as Chief Superintendent and Chairman. The petitioner was exempted and the Assistant Professor was given the said charge. The HoD is also the Chairman and Chief Superintendent in the matter of question paper setting and heads the Committee of grievances against Internal and External Assessments. The petitioner's son having got admission to the M.A. [English] Programme, the Pro-Vice-Chancellor suggested that the petitioner be not associated with any exam related matters for a period of two years. The 3<sup>rd</sup> respondent was, hence, granted the duty of question paper setting and other examination related works for the two academic years, as is indicated at Exhibit P6 dated 24.08.2015. But, on the next day, Exhibit P7 order was issued removing him from the post of HoD, which is challenged herein.

3. I have heard the learned Senior Counsel appearing for the petitioner as also the learned Standing Counsel for the respondent-University.

4. The learned Senior Counsel would contend that the petitioner himself had requested for relieving him of the examination duties for two years. That was specifically for the M.A.

[English] Programme, since his son was admitted to the said programme. There is no reason why he should be removed from the post of HoD, since the other department/work as also the examination work relating to the other programmes could be handled by the petitioner. The order at Exhibit P7, on the instructions of the Vice-Chancellor, goes against the specific recommendation and order of the Pro-Vice-Chancellor at Exhibit P6, who had been specifically delegated the authority with respect to examinations carried on within the University.

5. The learned Standing Counsel for the University, however, would contend that it is to ensure transparency and also to properly co-ordinate the functions of the Department that the petitioner was removed from the post of HoD. The learned Standing Counsel specifically takes me through paragraph 6 of the counter affidavit to canvass his contention. The learned counsel would also rely on ***Jyothi Mariam John (Dr.) v. Union Christian College*** [ILR 2012 (3) Kerala 155] and an unreported decision of this Court in **W.P.(C).No.3581 of 2013 dated 12.03.2013 [Dr.Vanaja.V. Mahathma Gandhi University and others]** to further buttress his contention that the Vice-Chancellor would have

the authority to decide on who is to be posted as the HoD and exclusion of a person would not necessarily entail any prejudice, since the HoD has no additional allowances, but only additional duties and responsibilities. The essential contention is that, there could be no claim of adverse civil consequences, on being excluded from such work.

6. The counter affidavit of the respondent-University indicates that there was an incident of a fracas between the petitioner and the Public Relations Officer [for brevity "PRO"] and another of a complaint with respect to the Entrance Examination of the M.A. [English] Programme of 2015. As to the incident leading to a dispute with the PRO, nothing is stated in Exhibit P7. However, the allegation raised by a candidate in the M.A. Entrance Examination was specifically noticed in Exhibit P7. In the additional counter affidavit dated 23.09.2015, it is stated that an enquiry has been initiated on the basis of the complaint received with respect to the conduct of the Entrance Examination and that "the pendency of the enquiry is not the reason for issuing Exhibit P7 as it is evident from that order itself" (sic). Hence, it cannot at all be said that the enquiry or the earlier incident which led to

Exhibit R1(d) was in any way relevant, in the petitioner being removed from the post of HoD. The enquiry initiated at Exhibit R1 (h) necessarily has to be taken to its logical end. This Court would not comment on that at this point of time.

7. This Court has given anxious consideration to the submission made by the learned Standing Counsel that the examination work is an integral part of the function of the HoD and that alone cannot be assigned to another teacher. This Court need not dwell upon the power of the Vice-Chancellor to remove the HoD, since, herein there is no such power exercised on legitimate grounds of inefficiency or otherwise. The cited decisions would also not be applicable. ***Jyothi Mariam John (Dr.)*** (*supra*) was a case in which the Principal, on the grounds of inefficiency, sought removal of the senior-most Associate Professor from the post of HoD. This Court found that the HoD is a pivotal post and is enjoined upon to co-ordinate the activities in the Department and expected to lead the Department efficiently. On a finding of inefficiency leading to disharmony and lack of co-operation for want of proper leadership, it was held that there was nothing wrong in the senior-most Professor being excluded from such

post. In the present case, there is absolutely no ground of inefficiency levelled. Even the two instances, one, an incident of a row between the HoD and the PRO and, the other, with respect to the conduct of the Entrance Examination, are both pending enquiry. Neither was a consideration for the present removal on account of any of the said instances; nor need this Court look into the said incidents to consider the issue raised herein.

8. ***Dr.Vanaja.V.*** (*supra*), on a reading of the same, does not lead to an assumption that there was a declaration insofar as there being no prejudice caused by reason of adverse civil consequences, if the senior-most teacher is kept away from that post. That was a case in which the HoD, who was due to retire in the end of the academic year, proceeded on leave three months before. However, she did not retire as scheduled since the retirement age was increased by one year. The said Associate Professor joined back the Department after leave and sought for being handed back the responsibility of the HoD. There was also a dispute as to whether on the availability of a Reader, in the Department, the senior-most Associate Professor can be given the charge of the Department. Further, the specific finding that, no

adverse civil consequences would visit the petitioner therein, was on account of the fact that by the time the writ petition was decided, there were only 18 days left for the petitioner to retire. The Court held that there was absolutely no point in unsettling the state of affairs at that point of time, since it would affect the interest of the institution. True, the HoD does not have any additional monetary benefits, but only has additional duties and responsibilities. But, merely because there are no monetary benefits, it cannot be said that it would not visit a senior person with adverse civil consequences if he is kept away from the post of HoD, which he/she is ordinarily entitled to as per the rules and regulations. It is definitely an ignominy for the senior-most, to work under a junior hand, especially since the HoD leads the Department and has the duty of supervision of the other teachers in the Department.

9. In the present case, under Section 19(4) of the Sree Sankaracharya University of Sanskrit Act, 1994 [for brevity “the Act”], the Departments constituting the basic units of the academic studies of the University is headed by a Professor and only in the absence of a Professor, a Reader or a senior-most teacher.

Though it is permissible for the Professor or Reader or a senior-most teacher to recuse himself/herself from the additional duties, normally when there is an admitted senior, he cannot be by-passed to appoint a junior. This Court is unable to countenance the argument of the University that if the petitioner is continued as the HoD, in the present situation, he cannot perform the duties of the HoD. The said contention is raised only on account of the petitioner's son having taken M.A. [English] Programme under the University. The said fact alone, need not lead to a lack of transparency in the petitioner being retained as the HoD.

10. Exhibit R1(k) regarding the posting of a Part-time Sweeper, as her son was studying in the University, being assigned other work than that inside the chamber of the Vice-Chancellor cannot at all be equated to the present circumstances. The chambers of the Vice-Chancellor would be privy to many discussions and would also contain many confidential documents, including question papers, which a Part-time Sweeper could have access to. The continuance of a HoD, the senior-most Professor in the Department, cannot at all be equated to the situation pointed out by the University with

respect to a Part-time Sweeper.

11. True, the evaluation of the examinations, including the internal and external assessments and forwarding of such marks is the duty of the HoD. It was hence decided that the petitioner be kept away from such examination duties and of course even from taking classes for the programme for which his son is studying. It is for the said purpose that Exhibit P6 was issued by the Pro-Vice-Chancellor. The 3<sup>rd</sup> respondent herein, who was brought from Thiruvananthapuram, was entrusted with the duties of question paper setting and other examination related works of the Department for a period of two academic years. The other activities could as well be led by the HoD, the petitioner himself.

12. It would even be appropriate if the 3<sup>rd</sup> respondent is entrusted only with the evaluation and examination procedures carried out in the M.A. [English] Programme for the next two academic years when the petitioner's son would normally be undergoing the said course. Any other programme could be effectively managed by the petitioner without any allegation of bias. Exhibit R1(j) indicates that the evaluations, both internal and

external, is to be supervised by a Committee chaired by the HoD. The question paper setting is also to be scrutinised and forwarded by the Board with the HoD and two teachers nominated by the HoD. By entrusting the examination work to the 3<sup>rd</sup> respondent, there would be sufficient transparency and it would not in any way hamper the impartiality in conduct of examinations. This Court cannot at all find fault with the University's assertion that the teachers should adhere to a reasonable pattern of conduct and demeanour expected of them by the community so as to not intermingle their private affairs with official duties, leading to any undermining of the dignity of the profession. There is no such ground raised as of now against the HoD. Though there is considerable dispute on whether the petitioner himself requested to be relieved of the examination duties in the M.A. [English] Programme, suffice it to say that the submissions made before this Court would indicate that he is willing to be relieved of such duties.

13. In the above circumstances, Exhibit P7 is found to be unsustainable and the same stands set aside. Exhibit P6 would hold the field. The petitioner would be continued as the HoD and the 3<sup>rd</sup> respondent would handover such charge to the petitioner;

however, subject to Exhibit P6 orders. Since the 3<sup>rd</sup> respondent, who is the next senior-most person, has been brought to Kalady specifically for the purpose of taking charge of the Department, it is only proper that she be continued at Kalady itself, since, in any event, even otherwise the petitioner would also have had to be continued along with the 3<sup>rd</sup> respondent.

The writ petition is allowed, directing the University to ensure the handing over of charge within a period of one week from the date of receipt of a certified copy of this judgment. It is made clear that two instances with respect to which enquiries have been initiated against the petitioner, though noticed in this judgment, this Court has not in any manner observed anything on the merits or the allegations levelled, which would have to be looked into by the appropriate authority on the basis of the evidence led at the enquiry. Parties are left to suffer their respective costs.

**Sd/-**  
K.Vinod Chandran  
Judge.

vkul/-

[ true copy ]