

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 30410 of 2013 (A)

PETITIONER:

**DR. PREETHA.S.S.,
ASSISTANT PROFESSOR IN BOTANY,
ST.JOHN'S COLLEGE, ANCHAL,
RESIDING AT 'TEJAS', S.R.A-16A,
KUDAPPANAKUNNU, MUKKOLAKKAL,
KALLAYAM P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT(S):

- 1. PRINCIPAL, S.T JOHNS COLLEGE,
ANCHAL - 691 306.**
- 2. UNIVERSITY OF KERALA,
REP. BY ITS REGISTRAR, UNIVERSITY CAMPUS,
THIRUVANANTHAPURAM - 695 033.**
- 3. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOLLAM - 691 001.**
- 4. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 001.**
- 5. STATE OF KERALA,
REP. BY ITS SECRETARY TO THE GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

**R1 BY ADV. SRI.J.HARIKUMAR
R2 BY SRI.BECHU KURIAN THOMAS, SC
R3 TO R5 BY SENIOR GOVT. PLEADER SRI.S.JAMAL**

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

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: A TRUE COPY OF THE APPOINTMENT ORDER DT.27.02.2012 ISSUED BY THE MANAGEMENT OF MALANKARA SYRIAN CATHOLIC COLLEGES, THIRUVANANTHAPURAM TO THE PETITIONER.
- P2: A TRUE COPY OF THE ORDER NO.AC.F.I/26981/2012 DT.23.08.2012 ISSUED BY THE 2ND RESPONDENT.
- P3: A TRUE COPY OF THE COMMUNICATION NO.B5/9064-73/12 DT.06.10.2012 ISSUED BY THE 3RD RESPONDENT.
- P4: A TRUE COPY OF THE ORDER NO.M.S.C-05/2011/T.S DT.13.07.2012 ISSUED BY THE MANAGEMENT OF MALANKARA SYRIAN CATHOLIC COLLEGES, THIRUVANANTHAPURAM TO THE PETITIONER.
- P5: A TRUE COPY OF THE G.O.(RT)NO.66/2013/H.EDN. DT.17.01.2013 ISSUED BY THE 5TH RESPONDENT.
- P6: A TRUE COPY OF THE MINUTES OF THE MEETING OF THE STANDING COMMITTEE OF THE SYNDICATE OF THE 2ND RESPONDENT DT.24.06.2013.
- P7: A TRUE COPY OF THE G.O.(MS)NO.190/2013/H.EDN. DT.15.05.2013 ISSUED BY THE 5TH RESPONDENT.
- P8: A TRUE COPY OF THE LETTER NO.21966/D1/13/H.EDN. DT.04.09.2013 ISSUED BY THE 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.30410 of 2013

Dated this the 2nd day of February, 2015

J U D G M E N T

The petitioner is appointed as Lecturer/Assistant Professor in Botany by the Management of Malankara Syrian Catholic Colleges, Thiruvananthapuram in the 1st respondent college with effect from 27.02.2012 in the leave vacancy of Smt.Geetha S.George. Smt.Geetha S.George availed Leave Without Allowance from 16.7.2008 to 16.7.2012. The said appointment was approved by the 1st respondent as per order dated 23.8.2012 and salary was sanctioned and disbursed to the petitioner. In the mean while, Smt.Geetha extended the leave from 17.7.2012 to 16.2.2016. The 5th respondent granted extension of leave to Geetha S.George as per Ext.P5 Government Order. Accordingly the petitioner was permitted to continue in the above vacancy. The University by Ext.P5 order approved the appointment of the petitioner subject to Ext.P6 order issued by the Government. Ext.P6 Government Order reads as follows:

“Moreover no regular appointment must be done in vacancies which arose against Leave Without Allowances of both teaching and non-teaching staff and management will have to engage guest lecturers/contract or daily wage employees as the case may be in those vacancies by paying them from their own funds. “

2. The learned counsel for the petitioner would submit that Ext.P6 is dated 15.5.2013. It has only a prospective application and it cannot take away the vested right of employee appointed much before Ext.P6. I am also of the view that the right of the petitioner cannot be taken away by Ext.P6. There is no embargo as far as the appointment of the petitioner is based on an extant regulation at the time of her appointment. Ext.P6 would indicate that vacancies arose against Leave Without Allowance shall be filled up by engaging guest lecturers/contract or daily wage employees. This order is applicable only after 15.5.2013.

3. In view of the above, the petitioner shall be paid salary in accordance with law. There shall be a direction to the University to approve the appointment of the petitioner and

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forward the same to the 4th respondent. This shall be done within a period of four weeks from the date of receipt of a copy of this judgment. Thereupon the 4th respondent shall release the salary arrears to the petitioner within a period of two months.

The writ petition is disposed of as above.

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/