

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

W.P.(C).No.29325 of 2015 (M)

PETITIONER(S):-

DR. ALASSANKUTTY. P., S/O.MOHAMMED P.,
PARAKKUNDIL HOUSE, CHEENIKKAL P.O.,
VALLUVAMBRAM, MALAPPURAM DISTRICT- 673 561.

BY ADV. SRI.P.C.SASIDHARAN.

RESPONDENT(S):-

1. THE CHANCELLOR, UNIVERSITY OF CALICUT,
RAJ BHAVAN, THIRUVANANTHAPURAM - 673 635.
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
3. SEARCH COMMITTEE
CONSTITUTED BY THE CHANCELLOR FOR RECOMMENDING THE
NAME OF PERSONS TO BE APPOINTED AS VICE CHANCELLOR OF
UNIVERSITY OF CALICUT,
REPRESENTED BY ITS CONVENER, SECRETARY TO GOVERNMENT,
HIGHER EDUCATION (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
4. THE UNIVERSITY OF CALICUT, REPRESENTED BY ITS REGISTRAR,
UNIVERSITY CAMPUS, CALICUT UNIVERSITY P.O.,
THENJIPPALAM, MALAPPURAM DISTRICT - 673 635.

* ADDITIONAL RESPONDENTS 5 TO 7 IMPEADED:

ADDL.R5. DR. FATHIMATHU SUHARA,
PROFESSOR OF DEPARTMENT OF LIFE SCIENCE,
UNIVERSITY OF CALICUT.

ADDL.R6. DR. M.V. NARAYANAN,
PROFESSOR & HEAD OF THE DEPARTMENT,
DEPARTMENT OF ENGLISH,
UNIVERSITY OF CALICUT, THENJIPALAM - 673 635.

ADDL.R7. P.SHIVADASAN,
READER OF DEPARTMENT OF HISTORY,
UNIVERSITY OF CALICUT, THENJIPALAM - 673 635.

* [ADDITIONAL RESPONDENTS 5 TO 7 ARE IMPEADED AS PER
ORDER ON I.A.NO.14562 OF 2015 DATED 27-10-2015].

R1 BY SENIOR ADVOCATE SRI.K.JAJU BABU &
STANDING COUNSEL SMT.M.U.VIJAYALAKSHMI.
R2 & R3 BY ADDITIONAL ADVOCATE GENERAL SRI.K.A.JALEEL,
I/B. SPECIAL GOVERNMENT PLEADER SRI.MUHAMOOD.T.T.
R4 BY STANDING COUNSEL SRI.SANTHOSH MATHEW.
R5 TO R7 BY ADVS. SRI.M.P.SREEKRISHNAN
SMT.M.H.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON 30-10-2015 DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P-1: TRUE COPY OF THE NOTIFICATION PUBLISHED IN
MATHRUBHOOMI DAILY DATED 23.9.2015.
- EXT.P-2: TRUE COPY OF THE ORDER DATED 27.3.2010.
- EXT.P-3: TRUE COPY OF THE NOTIFICATION DATED 26.2.2014 AMENDING
THE REGULATION.
- EXT.P-4: TRUE COPY OF THE COVERING LETTER DATED 19.9.2015
ALONG WITH THE CONTENTS OF THE NOTIFICATION TO BE
PUBLISHED.
- EXT.P-5: TRUE COPY OF THE REPRESENTATION DATED 19.9.2015.

RESPONDENT(S)' EXHIBITS:-

- EXT.R5(1) TRUE COPY OF THE REPRESENTATION DATED 28.08.2015.
- EXT.R5(2) TRUE COPY OF THE REPRESENTATION DATED 20.09.2015.
- EXT.R5(3) TRUE COPY OF THE GO(P) 392/2010/H.EDN. DATED 10.12.2010.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.29325 of 2015-M

Dated this the 30th day of October, 2015

JUDGMENT

The petitioner, who retired as an Assistant Professor from a College affiliated to the respondent-University, is aggrieved with the notification issued at Exhibit P1, which restricts the consideration for appointment to the post of Vice-Chancellor; to persons who have ten years of experience as a Professor in the University System. The petitioner contends that the words employed, being “University System”, the Professors in affiliated colleges would not be entitled to apply for the post, which would lead to an arbitrary exclusion of very many competent academicians, who, by mere quirk of fate, has been appointed to the affiliated colleges and had carried on distinguished careers in academics in such colleges. The petitioner also assails the power of the Search Committee to prescribe qualifications, that too as prescribed by the University Grants Commission [for brevity “UGC”], which, according to the petitioner, would be applicable only to the teaching staff of the University.

2. The petitioner draws a distinction from the various provisions of the Calicut University Act, 1975 [for brevity "CU Act"] to urge that while Vice-Chancellor is an officer of the University [Section 9] and the CU Act and the Regulations deal with the teaching and non-teaching staff differently. The provisions of Section 10 of the CU Act is relied on to dilate upon the manner in which a Search Committee has to be appointed and the functions of such a Search Committee, constituted. The provisions dealing with such constitution and the manner in which the appointment of the Vice-Chancellor has to be made, does not contemplate any specific qualification to be prescribed, especially when selection is made to the pivotal post in the University. There can be no such limitation on qualifications or career designations, is the contention. Further, it is contended that prior to the implementation of the UGC Scheme of the year 2010, there was no post of Professor except where the teachers are appointed to the Departments in the University; as distinguished from the affiliated colleges. As far as the affiliated colleges are concerned, the earlier designations were Lecturer, Lecturer [Senior Scale] and Lecturer [Selection Grade]; the latter of which designation was equivalent to that of Reader in a University.

3. Only by Exhibit P2 dated 27.03.2010, the UGC Scheme was adopted by the Government of Kerala and the Lecturers of the affiliated colleges under the Universities in Kerala also were designated as Assistant Professors, Associate Professors and Professors. The Scheme as implemented by the Government of Kerala disclosed in Exhibit P2 required re-designation of a person having service as Lecturer [Selection Grade] for three years as on 01.01.2006 to be re-designated as Associate Professor and again re-designated as Professor, subject to possession of Ph.D. Degree after completion of three years of service in the scale of Associate Professor. Hence, the mere designation of Professor is not relevant and even a person continued as Lecturer [Selection Grade] would have to be considered for appointment if he is competent to be designated as Professor. Mere designation cannot be the criterion, is the essential contention.

4. The Calicut University is also said to have adopted the Regulations of the UGC by Exhibit P3 dated 26.02.2014; shortly after which the petitioner retired on 31.03.2014. The learned counsel for the petitioner also relies on the decision in ***Kalyani Mathivanan v. K.V.Jeyaraj* [2015 (6) SCC 363]** to contend that as

long as the Regulations of the University are not adopted by the State and necessary amendments made to the Regulations of the University, there could be no mandate on the State to adopt such Regulations. The Search Committee, at any rate, could not be prescribing such qualifications, since the source of power to do that would have to be conceded either to the State or to the University.

5. The learned Additional Advocate General, appearing for respondents 1 to 3, would contend that there is no exclusion as per the notification, since any person having ten years service as a Professor in the University System, which includes the affiliated colleges also, could apply for appointment. The use of the words "University System" is not intended to exclude academicians in the affiliated colleges and definitely they would also come under the University System for reason of the affiliation having been granted by the University. It is also contended that the post of a Vice-Chancellor cannot be merely said to be that of an officer of the University, though it comes under such categorisation in Section 9, especially when sub-section (8) of Section 9 styles the Vice-Chancellor to be the principal academic and executive officer of the University, Hence, the role of the Vice-Chancellor is not

merely of an officer and has the essential character of academician also.

6. The learned counsel appearing for the additional respondents, to further buttress the contention of the State, would rely on sub-section (9) of Section 10, which provides for the Vice-Chancellor to be Chairman of the Senate, the Syndicate, the Academic Council, the Students' Council and the Finance Committee. The learned counsel for the additional respondents also would rely on the very same judgment of the Hon'ble Supreme Court to contend that as has been found in the said judgment, there is no conflict with the Central legislation and there is also no prescription by the State of Kerala which is in conflict with the Central legislation. The State of Kerala also has adopted the Regulations of the UGC as is seen from Exhibit R5(3), argues counsel.

7. The first argument to be addressed is the lack of power of the Standing Committee to prescribe a qualification; as is prescribed in Exhibit P1. The qualification adopted by the Search Committee is as prescribed in the UGC Regulations and the provisions of the C.U.Act. The C.U. Act does not prescribe any

specific qualification for the post of Vice-Chancellor except for the prescription that none who is above sixty years shall be so appointed [Section 10(5)]. The UGC has, by the University Grants Commission (Minimum Qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of Standards in Higher Education) (2nd Amendment) Regulations, 2013, by clause 7.3.0 provided for the qualification of a Vice-Chancellor as follows:

“7.3.0. VICE CHANCELLOR:

- i. Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice Chancellors. The Vice Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization”.

Clause (ii) also provides for the selection of Vice-Chancellor to be through a proper identification of a panel of 3 - 5 names, by a Search Committee, through a public notification. The specific contention taken by the petitioner is that there is no specific adoption of the said Regulations, either by the State of Kerala or by the University of Calicut. The petitioner would also rely on Exhibits

P2 and P3 to contend that the adoption of UGC Scheme is only with respect to the teaching staff and the Vice-Chancellor stands outside the purview of the definition of a “teaching staff”, going by the C.U.Act, Statutes and Regulations of the University.

8. This Court is unable to countenance the argument of the petitioner that the Vice-Chancellor is a mere executive officer of the University. The Vice-Chancellor, as per the afore-cited provisions of the C.U.Act, is both the executive officer and the principal academician of the University. Exhibit P2 is with reference to the revision of scales of pay of Universities, affiliated college, etc. and by clause 7.2 specifically refers to the pay of the Vice-Chancellor. Further, the Regulations of 2013 brought out by the University, referred to earlier, prescribes the minimum qualifications for appointment of teachers and other academic staff in Universities. The provision made in such Regulation for the minimum qualification of a Vice-Chancellor indicates that such officer also would come within the definition of “teacher and other academic staff”. It is also quite pertinent that the said Regulations of 2010 has been adopted by the State Government, as is indicated in Exhibit R5(3); which too contains the similar provision with respect

to Vice-Chancellor. The Regulations of 2010 had been approved and directed to be implemented as such by Exhibit R5(3) on 10.12.2010. Even if the source of power for deciding on the eligibility conditions and qualification for appointment to the post of Vice-Chancellor is conceded to the State, by adoption of the Regulations of the UGC, the State has prescribed the qualifications as laid down by the UGC. In that context, it cannot be said that it was the Search Committee which laid down the qualification.

9. **Kalyani Mathivanan** (supra) was in similar circumstance of the appointment of a Vice-Chancellor to the Madurai Kamaraj University. A challenge was made to the appointment on the ground of the selected person not being qualified as per the UGC Regulations of 2010. The Division Bench of the High Court of Madras upheld the challenge, against which the selected person was before the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed clause 7.3.0 of the Regulations of 2010, as has been extracted hereinabove, along with the other provisions in the Regulations and held so in paragraphs 56 and 57:

“56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational

institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connect, one may refer to Para 89(p)(v) of Appendix I dated 31.12.2008 and Regulation 7.4.0 of the UGC Regulations, 2010.

57. It is also not the case of the respondents that the Scheme as contained in Appeneix I to the Annexure of the UGC Regulations, 2010 has been adopted and implemented by the State Government. It is also apparent from the facts that the University Act has not been amended in terms of the UGC Regulations, 2010 nor was any action taken by UGC under Section 14 of the UGC Act, 19546 as a consequence of failure of the University to comply with the recommendations of the Commission under Section 14 of the UGC Act, 1956”.

Hence, in the said case the State Government had not adopted the Regulations and had not been apparently receiving grants from the UGC also. The appointee was found to have the essential qualifications required under the State enactment. It was, hence, held that there was no question of any inconsistency, for reason of the State Government having not adopted the UGC Regulations of 2010.

10. In fact, the Hon'ble Supreme Court also noticed the decision of the High Court of Bombay, which was dissented from by the High Court of Madras. The High Court of Bombay had in ***Suresh Patilkhede v. Chancellor, Universities of Maharashtra*** [2012 SCC OnLine Bom. 2005] held that clause 7.2.0 and 7.3.0. of the UGC Regulations for appointment of Pro-Chancellor and Vice-Chancellor of the University governed by the UGC Act cannot be treated as falling under clauses (e) and (g) of Section 26(1) of the UGC Act, 1956. The power was traceable only to Section 12(d) of the UGC Act, which makes it merely recommendatory in nature, was the finding. The Hon'ble Supreme Court specifically found that the said finding is not correct, since the power is to be traced to section 26(1) of the UGC Act itself.

11. But, however, insofar as the finding that Regulation 7.3.0. was recommendatory in nature, the same was upheld insofar as it relates to the Universities and Colleges under the State legislation. There, the appointment was upheld on the specific finding that there is no conflict between the State legislation and the Central legislation or the subordinate legislation made under Entry 25 of Concurrent List of the Constitution, since the UGC

Regulations of 2010 was not adopted by the State Government.

12. In the present case, the situation is quite different as has been disclosed from Exhibit R5(3). The UGC Regulations of 2010 on Minimum Qualifications of Appointment of Teachers and Other Academic Staff in Universities and Colleges was approved and it was decided to implement the Regulations as such. The essential qualification for a Vice-Chancellor, as is extracted above in clause 7.3.0 is a part of the Regulations. Hence, on adoption of the said Regulations, there cannot be a diversion from such qualification, in the event of which the University would be faced with the threat of withdrawal of grants and the State with the prospect of the financial benefit from the Central Government, to meet a portion of the revised pay as per the Scheme of 2010, to be withdrawn.

13. The further argument of the petitioner is on the ground of the re-designation made by Exhibit P2. Admittedly the petitioner was continuing as a Lecturer [Selection Grade] when the UGC Scheme at Exhibit P2 was implemented by the State Government. As per clause 6.1.9, Lecturers [Selection Grade] who have completed three years as on 01.01.2006 would be placed in

the higher Pay Band and an Academic Grade Pay [for brevity “AGP”] of Rs.9,000/- and would also be re-designated as Associate Professor. An Associate Professor completing three years of service in the AGP of Rs.9,000/- and possessing a Ph.D. Degree would be eligible to be appointed and designated as Professor as per clause 6.1.13. The petitioner’s contention that his service as a Lecturer [Selection Grade] would qualify for being deemed as service spent equivalent to that of a Professor cannot be accepted. Even by the UGC Scheme, the petitioner would have been only an Associate Professor as on 01.01.2006 and could at best aspire to be a Professor as on 01.01.2009 when he is deemed to have completed three years in the AGP of Rs.9,000/-. True, the UGC Scheme was reduced to the Regulations of the University only in February, 2014. Immediately subsequent to that the petitioner was retired. But even if a Selection Committee was constituted and the petitioner had been granted promotion as Professor with effect from 01.01.2009, even then he could not satisfy the ten years experience as a Professor, required in the notification.

14. The learned counsel for the petitioner then would contend that as a matter of practise, Vice-Chancellors in the various

Universities were appointed by the process of search conducted without being fettered by requirements of qualification and experience and the quality of academicians are to be assessed by their work and cannot be confined to qualified hands alone or persons having experience in determinate designations under the University System. The learned counsel would also contend that the specific designations now imported has excluded a sizeable chunk of academicians within the State who would not have served under the designation of a Professor.

15. It is to be noticed that the writ petition is filed on the claim put forward by the petitioner as to his eligibility to apply for the post of Vice-Chancellor. The specific averment made is that he had applied for the post as per the notification and the qualifications prescribed as adopted from the UGC, allegedly by the Search Committee, is illegal. This Court is not inclined to convert the writ petition filed on such grievances to a 'public interest litigation'. Nor is it necessary, since it has been found that there is no illegality in the prescription of the qualifications. The prescription of qualification as made by the UGC has been adopted by the State and the stipulation in Exhibit P1 as to the eligibility norms cannot be said to

be that stipulated by the Search Committee.

16. There can be no fault found as to the source of power, since the State itself has thought it fit to adopt the UGC Regulations. There can also be no legitimate expectation for any academician to be considered for appointment as the Vice-Chancellor on the premise of a prior practise; especially in the present context; in the teeth of the prescription in the Regulations of the UGC. Apposite would be reference to ***Sethi Auto Service Station v. DDA [(2009) 1 SCC 180]***:

“33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate

expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide *Hindustan Development Corpn.* [1993] 3 SCC 499 : (1994 AIR SCW 643)]”.

17. The learned counsel would also point to a specific instance of a retired IAS Officer being appointed as a Vice-Chancellor of one of the Universities. An exception does not lay down the rule and in any event a violation of the UGC norms cannot occasion an interference from Court and can only lead to punitive action from the UGC [*vide S.N.College v. N.Raveendran - 2001 (3) KLT 938 (DB)* and *University of Delhi v. Raj Singh - AIR 1995 SC 336*].

The writ petition, hence without doubt is devoid of merit and would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

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