

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 34115 of 2011 (L)

PETITIONER :

**DR.P.M.MINI
LECTURER IN MATHEMATICS,
M.A.M.O.COLLEGE, MANASSERY
MUKKOM, CALICUT.**

**BY ADVS.SMT.A.K.PREETHA
SRI.C.ANIL KUMAR**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF COLLEGIATE EDUCATION, SECRETARIAT
TRIVANDRUM-686001.**
- 2. THE DIRECTOR OF COLLEGIATE EDUCATION,
TRIVANDRUM-686001.**
- 3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
CALICUT-673601.**
- 4. THE PRINCIPAL,
M.A.M.O. COLLEGE, MANASSERY, MUKKOM
CALICUT-673601.**

***ADDL.R5 IMPEADED**

***ADDL.R5. UNIVERSITY OF CALICUT
TENHIPALAM, CALICUT, MALAPPURAM
KERALA – 673 635
REPRESENTED BY THE REGISTRAR.**

***ADDL. R5 IS IMPEADED AS PER ORDER IN IA NO. 4354/2015 DATED
23.3.2015.**

**R1 TO R3 BY GOVT. PLEADER SMT. LOWSY A.
R4 BY ADVS. SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
ADDL.R5 BY ADV. SRI.SANTHOSH MATHEW, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 TRUE COPY OF THE ORDER DATED 6/10/2003 OF THE 4TH
RESPONDENT, APPOINTING THE PETITIONER AS A LECTURER
IN MATHEMATICS, WITH RETROSPECTIVE EFFECT FROM 5/9/2002.
- EXT.P2 TRUE COPY OF THE ORDER DATED 17/3/2008 GRANTING
EXEMPTION TO THE PETITIONER FROM ACQUIRING THE NET
QUALIFICATION.
- EXT.P3 TRUE COPY OF THE JUDGEMENT DATED 25/5/2010 IN REVISION
PETITION NO.1084/2009.
- EXT.P4 TRUE COPY OF THE ORDER DATED 17/10/2008.
- EXT.P5 TRUE COPY OF THE ORDER DATED 1/3/2010.
- EXT.P6 TRUE COPY OF THE ORDER DATED 25/11/2010 ACCORDING SANCTION
OF THE APPOINTMENT OF THE PETITIONER AS LECTURER FROM
17/3/2008 BEING THE DATED OF EXT.P2 ORDER.
- EXT. P7 COPY OF THE RELEVANT PORTION OF THE MINUTES.
- EXT. P8 COPY OF THE ORDER NO. 579/2014/CU DATED 20-1-2014.
- EXT. P9 COPY OF THE REPRESENTATION DATED 28.5.2014 SUBMITTED BY
THE PETITIONER TO THE 3RD RESPONDENT THROUGH PROPER
CHANNEL.

RESPONDENTS' EXHIBITS :

- EXT. R3(a) COPY OF THE PH.D CERTIFICATE DATED 24.5.2010 OBTAINED BY THE
PETITIONER FROM M.G. UNIVERSITY.
- EXT. R3(b) COPY OF THE LETTER NO. E1/2774/11 DATED 2.12.2011 ISSUED BY
DEPUTY DIRECTOR OF COLLEGIATE EDUCATION TO THE
PRINCIPAL, MAMO COLLEGE, MUKKAM.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C)No.34115 of 2011

Dated this the 23rd day of March, 2015

JUDGMENT

The petitioner was appointed without NET qualification as Junior Lecturer consequent upon the abolition of Pre-degree Course in the 4th respondent College. There were series of litigations relating to exemption granting from NET qualification. The petitioner is also party to W.P.(C) No. 31317/2006. The learned Single Judge upheld the claim of the petitioner for granting permanent exemption. Thereafter, at the instance of the University Grants Commission (UGC), a Writ Appeal was filed as W.A.No.23/2008. In the Writ Appeal, the Division Bench of this Court held that considering the subsequent restriction made by the UGC for exemption was only for the period of two years, the petitioner will be entitled for salary for the period of two years during the

period of exemption and the petitioner cannot claim salary from the State after the period as she did not have the benefit of exemption or qualification. Thereafter, a Review Petition was filed by the petitioner, which is produced as Ext.P3. The Review Petition is numbered as R.P.No.1084/2009. In the Review Petition, this Court clarified that two years restriction will enure to the benefit of the petitioner from the date of exemption order and not from the date of initial appointment. Thus, in the light of the earlier judgment of the Writ Appeal, the petitioner is entitled for salary during the period, i.e., from the date of order passed by the UGC, which is produced as Ext.P2. The date of the above order is 17.3.2008.

2. There cannot be any difficulty in holding that the petitioner is entitled for salary from 17.3.2008 till 16.3.2010. Thereafter, the petitioner acquired Ph.D. The Ph.D was

awarded to the petitioner on 6.4.2010. The petitioner, therefore, submits that she is exempted from passing NET and therefore, she is entitled for entire salary payable in the UGC scale. It is on account of non-payment of salary, the petitioner has approached this Court.

3. The petitioner's appointment with effect from the date of original appointment has been approved by the University consequent upon awarding Ph.D to her.

4. This writ petition is seriously opposed by the Director of Collegiate Education on the ground that the petitioner did not acquire the qualification within the time granted by this Court. Therefore, it is contended that the petitioner is not entitled for salary and allowances.

5. The direction of this Court in the review order that exemption would enure to the benefit for a period of two years from the date of UGC order, which is dated 17.3.2008.

The petitioner instead of having NET qualification has acquired Ph.D, which exempt her from acquiring NET qualification. The question is whether the petitioner's appointment can be treated as irregular. There cannot be any doubt about that the petitioner was entitled for enjoyment of the exemption, which was affirmed by this Court as well. The only delay on her part about two weeks in obtaining Ph.D degree which qualifies her from exemption from NET.

I am of the view, considering the facts and circumstances, the delay in acquiring Ph.D which exempt her from acquiring NET, cannot be put against for denial of salary. The delay, if at all occurred, is only about 17 days. It is to be noted that no third parties right involved in this matter. It is only the matter of regularisation of appointment in public employment. The paramount consideration, in such situation, is the best interest of the Institution as well as

individual. A balanced approach need to sub-serve the public interest. That being so, treating that the petitioner's appointment is regular, the entire salary due to the petitioner shall be paid in the light of approval given by the University without any delay. Needful shall be done within a period of three months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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