



2024:KER:79849

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 25<sup>TH</sup> DAY OF OCTOBER 2024 / 3RD KARTHIKA, 1946

W.A. NO. 369 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 02.02.2024 IN WP(C)

NO.6971 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/3RD RESPONDENT:

DR. K. JAYAPRASAD  
AGED 64 YEARS  
PROFESSOR, DEPARTMENT OF INTERNATIONAL  
RELATIONS SCHOOL OF GLOBAL STUDIES, CENTRAL  
UNIVERSITY OF KERALA TEJASWINI HILLS, PERIYE  
P.O., KASARAGOD, PIN - 671316.

BY ADVS.  
SRI.K.P.SATHEESHAN (SR)  
J.VISHNU  
ANU BALAKRISHNAN NAMBIAR  
VIVEK A.V.  
SAJITH KUMAR V.



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RESPONDENTS/PETITIONER AND RESPONDENTS 1,2,4 & 5:

- 1 DR. JITHA S.R.  
AGED 57 YEARS  
SARGAM, T C 4/2351, PTP ROAD, PATTOM,  
THIRUVANANTHAPURAM, PIN - 695004.
- 2 CENTRAL UNIVERSITY OF KERALA REPRESENTED BY ITS  
REGISTRAR, TEJASWANI HILLS, PERIYE P.O,  
KASARAGOD, PIN - 671316.
- 3 UNIVERSITY GRANTS COMMISSION REPRESENTED BY ITS  
CHAIRMAN, BAHADUR SHAH ZAFAR MARG, NEW DELHI,  
PIN - 110002.
- 4 STATE OF KERALA REPRESENTED BY THE PRINCIPAL  
SECRETARY  
DEPT. OF HIGHER EDUCATION, GOVT OF KERALA,  
ANNEX II BLOCK, GOVT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001.
- 5 VICE CHANCELLOR CENTRAL UNIVERSITY OF KERALA  
TEJASWANI HILLS, PERIYE.P.O, KASARAGOD,  
PIN - 671316.

BY ADVS.  
K.RAMAKUMAR (SR.)  
T.SANJAY  
T.RAMPRASAD UNNI  
S. KRISHNAMOORTHY S  
S.M.PRASANTH  
SRI.UNNIKRISHNA KAIMAL, SR.GP  
SRI.S.KRISHNAMOORTHY, CGC

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING  
ON 23.09.2024, THE COURT ON 25.10.2024 DELIVERED THE  
FOLLOWING:



**ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.**

**W.A.No.369 of 2024**

**Dated this the 25<sup>th</sup> day of October, 2024**

**JUDGMENT**

P.G.Ajithkumar, J.

The 3<sup>rd</sup> respondent in W.P.(C) No.6971 of 2023 is the appellant. The 1<sup>st</sup> respondent filed the writ petition seeking the following reliefs:

- i) to declare that the petitioner is entitled to be appointed as Associate Professor in the Department of International Relations and Politics, in the 1<sup>st</sup> respondent-University;
- ii) to issue a writ of certiorari or any other appropriate writ, direction or order, quashing Ext.P8 order appointing the 3<sup>rd</sup> respondent as Professor in the 1<sup>st</sup> respondent-University;
- iii) to issue a writ of certiorari or any other appropriate writ, direction or order, quashing Ext.P21(a) non-speaking order issued by the 1<sup>st</sup> respondent;
- iv) to issue a writ of mandamus or any other appropriate writ, direction or order directing the 1<sup>st</sup> respondent to conduct a proper inquiry as stated in Ext.P17 communication issued pursuant to Ext.P16 direction issued by the Prime Minister's Grievance Portal, New Delhi, as expeditiously as possible after affording an



- opportunity of hearing to the petitioner;
- v) to issue a writ of mandamus or any other appropriate writ, direction or order directing the 1<sup>st</sup> respondent to remove the 3<sup>rd</sup> respondent from the rolls of the University on the basis of the various audit queries raised by the Indian Audit and Accounts Department, including Ext.P9(a).

2. The learned Single Judge after considering the submissions of the learned counsel on either side, instead of deciding whether or not the reliefs could be granted, proceeded to dispose of the writ petition in the following terms:

“2. Accordingly, without any expression on merits and without prejudice to any of the contentions of the parties, a fresh decision shall be taken on Exts.P14 and P15 representations by the 1<sup>st</sup> respondent University or anybody authorised by the University, after affording an opportunity of hearing to the petitioner and also the 3<sup>rd</sup> respondent. The decision, as directed above, shall be taken within three months from the date of receipt of a copy of this judgment. It will be open to the petitioner and the 3<sup>rd</sup> respondent to produce such materials required to substantiate their claims, which will be adverted to by the University while taking the decision. Needless to say that all the contentions of the parties are left open.”



3. The appellant assails the said judgment in this appeal filed under Section 5(i) of the Kerala High Court Act, 1958 on various grounds; the essential ones being the writ petition was filed highly belated and having the matter been earlier decided in favour of the appellant by this Court and the Apex Court, the same matter cannot be allowed to be re-agitated.

4. Heard the learned Senior Counsel appearing on instructions for the appellant, the learned counsel for the 1<sup>st</sup> respondent and the respective Standing Counsel for the Central University of Kerala and the University Grants Commission and the learned Senior Government Pleader.

5. The 1<sup>st</sup> respondent filed the writ petition contending that the appellant did not have even qualifications to apply for the post of Associate Professor in the Central University, as prescribed in the notification published on 18.02.2013. The 1<sup>st</sup> respondent was also an aspirant of the post, who was then working as the Principal of S.N.College, Chempazhanchy. She was an Associate Professor and Head of the Department of



Political Science also. Ext.P1 is the recommendations of the expert committee prescribing the qualifications to the posts of Associate Professor and Professor in the Central University. The 1<sup>st</sup> respondent narrates various perspectives of the post of Associate Professor and Professor, comparative qualification of the appellant and the 1<sup>st</sup> respondent as also that the political clout and influence exerted by the appellant to grab the appointment to the post of Associate Professor. Highlighting those and other facts, the 1<sup>st</sup> respondent filed the writ petition seeking the aforementioned reliefs.

6. The appellant was appointed as an Associate Professor on 08.08.2014. He was promoted as Professor on 24.05.2017 as per Ext.P8, with effect from 11.11.2005. The 1<sup>st</sup> respondent earlier filed W.P.(C) No.18242 of 2023 challenging the appointment of the appellant. That writ petition was disposed of as per Ext.P19 judgment. The directions and observations in the said judgment are the following:

“3. Taking note of the afore submissions and in particular, the limited plea of the petitioner, I am of the view that this Court will be justified in disposing of this Writ Petition.



Resultantly, I order this Writ Petition to the limited extent of directing the competent Authority of the 1<sup>st</sup> respondent—University, to take up Exts.P14 and P14(a) representations, stated to have been preferred by the petitioner, and to dispose them of, after affording her, as also the 3<sup>rd</sup> respondent, necessary opportunity of being heard; thus culminating in an appropriate order and necessary action thereon as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.”

7. It is in obedience to the directions contained in Ext.P19, the Central University considered the representations, which produced as Exts.P14 and P14(a) in W.P.(C) No.18242 of 2022. A committee was seen constituted to enquire into the matters as directed in Ext.P19 judgment. After considering the report of the committee, the University had taken the following decisions as per Ext.P21(a):

- “1. The screening of the application was carried out by the duly constituted screening committee (as per UGC Guidelines) and are found to be in order.
2. The selection was carried out by a duly constituted selection committee as per the UGC Guidelines which included subject experts.
3. The CAS promotion granted to Dr.Jayaprasad K is as per UGC Guidelines.”



8. In the writ petition, the 1<sup>st</sup> respondent alleges that Ext.P21(a) was rendered by the University without adverting to any of the relevant facts and in total disregard of the directions contained in Ext.P19 judgment. Exts.P14 and P15, are the representations submitted by the 1<sup>st</sup> respondent to the Vice-Chancellor and the Honourable Prime Minister of India setting forth her grievances concerning appointment of the appellant as Associate Professor and later as Professor in the Department of International Relations and Politics, Central University. The learned Single Judge, pointing out that no reason has been assigned in Ext.P21(a) in order to repel the allegations levelled by the 1<sup>st</sup> respondent in Exts.P14 and P15 representations, quashed that order. As a sequel to that, the learned Single Judge directed the University to take a fresh decision on the said representations, after giving an opportunity of being heard to the appellant as well as the 1<sup>st</sup> respondent.

9. The learned Senior Counsel appearing for the appellant would submit that the previous writ petitions, which





were filed challenging the appointment of the appellant were dismissed by this Court. The Special Leave Petition filed before the Apex Court was also dismissed. It is urged that in view of that reason, the present writ petition should not have been entertained. It is also pointed out that even the first writ petition, namely, W.P.(C) No.18242 of 2022 was dismissed also for the reason that it was filed much after the appointment of the appellant. If so, the present writ petition is highly belated. Yet another contention put forth by the learned Senior Counsel is that having Ext.P21(a) order been issued after considering the report of the committee constituted specifically to enquire into the matters connecting to the appointment of the appellant, there could not be a finding that the said order was not supported by any reason.

10. The learned counsel for the 1<sup>st</sup> respondent tried to refute the said contentions pointing out that the earlier writ petitions were filed by different persons and those were to camouflage the illegality in the appointment of the appellant. The dismissal of those writ petitions would not stand in the way



of 1<sup>st</sup> respondent's prosecuting the present writ petition. The Special Leave Petition filed before the Apex Court was dismissed as withdrawn and as such that also would not be a bar for the 1<sup>st</sup> respondent filing the writ petition. The learned Single Judge ordered to consider Exts.P14 and P15 representations afresh after having convinced about the illegality occurred in the appointment of the appellant and that aspect was not gone into at all while passing Ext.P21(a) order.

11. Ext.R3(a) is a copy of the judgment in W.P.(C) No.16075 of 2018. The specific challenge in that writ petition was that the appellant was appointed as Associate Professor without satisfying the requirements as to the qualifications. The said writ petition was dismissed holding that the appointment of the appellant was challenged only on a belated stage and that too after his promotion as the Professor. Another person filed W.P.(C) No.10643 of 2019 for the same purpose. Ext.R3(b) is a copy of the judgment. The said writ petition was also dismissed pointing out the findings in the judgment in W.P.(C) No.16075 of 2018. Annexure-A



produced along with the appeal memorandum is a copy of the order of the Apex Court dated 12.10.2018 in S.L.P.(C) No.26438 of 2018. Annexure R3(a) judgment was questioned in the said S.L.P. But the same was dismissed as withdrawn.

12. It is true that the said writ petitions were filed by different persons, but both were instituted as public interest litigations. When the judgments of this Court dismissing the said writ petitions have become final and the challenge to the appointment of the appellant before the Apex Court also failed, it is inappropriate for this Court to allow the 1<sup>st</sup> respondent to re-agitate the matter on a writ petition filed after about nine years of the appointment of the appellant as Associate Professor. No doubt, Exts.R3(a) and R3(b) judgments would not create a bar for the 1<sup>st</sup> respondent to institute a writ petition. But when this Court did not entertain a challenge to the appointment of the appellant in the writ petitions filed in the years 2018 and 2019 on the ground of delay and reckoning his subsequent promotion to the post of Professor, we are of the definite view that the 1<sup>st</sup> respondent cannot be allowed to re-agitate the matter.



13. As per Ext.P19 judgment the plea of the 1<sup>st</sup> respondent for challenging legality of the appointment of the appellant was entertained and the University was directed to consider the allegations set forth by her in her representations concerning the appointment of the appellant. As directed in that judgment, the University constituted a committee and obtained a report. It was on the basis of that report, Ext.P21(a) order was issued. When it is stated in it that after considering the findings of the committee a decision that the appointment of the appellant and his subsequent promotion under the Career Advancement Scheme as Professor were in accordance with U.G.C. guidelines, it is not available for this Court to sit in appeal and decide legality or not of the said order.

14. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145]** a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory



obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.

15. Viewed the facts and circumstances in this case in the light of the law laid down in the aforementioned decisions, this is not a fit case where a writ of mandamus as prayed in the writ petition can be issued. In a case where no such relief could be granted, there can have no direction to consider the representation submitted to the authority for the same purpose. Hence, we are of the view that the learned Single Judge has gone wrong in directing the 2<sup>nd</sup> respondent-University to reconsider Exts.P14 and P15 representations. Hence, the impugned judgment is liable to be set aside. We do so. The appeal is accordingly allowed.

Sd/-

**ANIL K. NARENDRA, JUDGE**

Sd/-

**P.G. AJITHKUMAR, JUDGE**



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**APPENDIX OF WA 369/2024**

**PETITIONER ANNEXURES**

**ANNEXURE A                    A TRUE COPY OF THE ORDER DATED  
12.10.2018 IN SLP © NO. 26348/2018 OF  
THE HON'BLE SUPREME COURT CHALLENGING  
THE JUDGMENT OF THIS HON'BLE COURT IN  
W.P. (C) NO. 16075/2018**