

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 30TH DAY OF MARCH 2017/9TH CHAITHRA, 1939

WP(C).No. 39632 of 2016 (D)

PETITIONER(S) / PETITIONERS:

- 1 MANAGER,
 SACRED HEART COLLEGE,
 CHALAKUDY - 680 307.
- 2 PRINCIPAL-IN-CHARGE,
 SECRED HEART COLLEGE,
 CHALAKUDY-680307.

BY ADVS.SRI.BABY ISSAC ILLICKAL
SRI.ISAAC KURUVILLA ILLIKAL

RESPONDENT(S) / RESPONDENTS:

1. UNIVERSITY OF CALICUT,
 REPRESENTED BY ITS REGISTRAR,
 MALAPPURAM - 673 635.
2. STATE OF KERALA,
 REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
 GOVERNMENT SECRETARIAT,
 THIRUVANANTHAPURAM - 695 001.
3. THE SECRETARY TO GOVERNMENT,
 HIGHER EDUCATION DEPARTMENT,
 GOVERNMENT SECRETARIAT,
 THIRUVANANTHAPURAM.
4. DIRECTOR OF COLLEGIATE EDUCATION,
 VIKAS BHAVAN,
 THIRUVANANTHAPURAM - 695 001.
5. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
 PALACE ROAD,
 GOVERNMENT TRAINING COLLEGE COMPOUND,
 THRISSUR - 20.
6. VICE CHANCELLOR
 UNIVERSITY OF CALICUT,
 MALAPPURAM - 673 635.

R1 & R6 BY SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY
R2 TO R5 BY GOVERNMENT PLEADER SMT. RAJI T. BHASKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-03-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 PHOTOCOPY OF THE ORDER DATED 17/11/2000 OF THE 1ST RESPONDENT UNIVERSITY.
- EXHIBIT P2 PHOTOCOPY OF THE STATEMENT FOR RE-ASSESSMENT OF WORKLOAD ON THE BASIS OF THE POST ADALAT REVIEW ON 18/12/2012.
- EXHIBIT P3 PHOTOCOPY OF THE AFFILIATION ORDER OF B.SC CHEMISTRY DATED 19/04/2005.
- EXHIBIT P4 PHOTOCOPY OF THE PERMANENT AFFILIATION ORDER DATED 15/03/2006.
- EXHIBIT P5 PHOTOCOPY OF THE ORDER DATED 01/03/2010 OF THE 1ST RESPONDENT.
- EXHIBIT P6 PHOTOCOPY OF THE ORDER OF THE 1ST RESPONDENT DATED 08/05/2012.
- EXHIBIT P7 PHOTOCOPY OF THE ORDER OF THE 1ST RESPONDENT DATED 01/06/2013.
- EXHIBIT P8 PHOTOCOPY OF THE NOC ISSUED BY THE 2ND RESPONDENT DATED 07/06/2014.
- EXHIBIT P8 (A) PHOTOCOPY OF THE AFFILIATION ORDER DATED 24/07/2014.
- EXHIBIT P9 PHOTOCOPY OF THE COVERING LETTER FORWARDING THE WORKLOAD BY THE 2ND PETITIONER TO THE 1ST RESPONDENT DATED 08/12/2014.
- EXHIBIT P9 (A) PHOTOCOPY OF THE COVERING LETTER FORWARDING THE WORKLOAD BY THE 2ND PETITIONER TO THE 1ST RESPONDENT DATED 04/12/2015.
- EXHIBIT P9 (B) PHOTOCOPY OF THE COVERING LETTER FORWARDING THE WORKLOAD BY THE 2ND PETITIONER TO THE 1ST RESPONDENT 02/11/2016.
- EXHIBIT P10 PHOTOCOPY OF THE LETTER OF THE 2ND PETITIONER TO THE 4TH RESPONDENT DATED 13/01/2015.
- EXHIBIT P10 (A) PHOTOCOPY OF THE LETTER OF THE 2ND PETITIONER TO THE 4TH RESPONDENT DATED 13/01/2015.
- EXHIBIT P10 (B) PHOTOCOPY OF THE LETTER OF THE 2ND PETITIONER TO THE 5TH RESPONDENT DATED 13/01/2015.
- EXHIBIT P11 PHOTOCOPY OF THE ORDER OF THE 4TH RESPONDENT DATED 17/09/2016.
- EXHIBIT P12 PHOTOCOPY OF THE COVERING LETTER DATED 04/10/2016 TO THE 2ND RESPONDENT.

- EXHIBIT P12(A) PHOTOCOPY OF THE COVERING LETTER DATED 04/10/2016 TO THE 4TH RESPONDENT.
- EXHIBIT P12(B) PHOTOCOPY OF THE COVERING LETTER DATED 04/10/2016 TO THE 5TH RESPONDENT.
- EXHIBIT P12(C) PHOTOCOPY OF THE COVERING LETTER DATED 14/10/2016 TO THE 1ST RESPONDENT.
- EXHIBIT P13 PHOTOCOPY OF THE ORDER OF THE 1ST RESPONDENT DATED 04/11/2016.
- EXHIBIT P14 PHOTOCOPY OF THE LETTER DATED 01/12/2016 OF THE 2ND PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P15 PHOTOCOPY OF THE WORKLOAD STATEMENTS OF THE PHYSICS FOR THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P15(A) PHOTOCOPY OF THE WORKLOAD STATEMENTS OF THE CHEMISTRY FOR THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P15(B) PHOTOCOPY OF THE WORKLOAD STATEMENTS OF THE MATHEMATICS THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P15(C) PHOTOCOPY OF THE WORKLOAD STATEMENTS OF THE COMPUTER SCIENCE FOR THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P15(D) PHOTOCOPIES OF THE WORKLOAD STATEMENTS OF MALAYALAM FOR THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P15(E) PHOTOCOPY OF THE WORKLOAD STATEMENTS OF ENGLISH FOR THE ACADEMIC YEAR 2016-17 BASED ON THE STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P16 PHOTOCOPY OF THE WORKLOAD STATEMENT OF THE M.SC. MATHEMATICS COURSE FOR THE ACADEMIC YEAR 2016-17 BASED ON STUDENT STRENGTH ON 01/11/2015.
- EXHIBIT P17 PHOTOCOPY OF THE JUDGMENT OF THIS HON'BLE COURT IN STATE OF KERALA.v.Dr.Sina ILR 2007(D) Ker 122.

RESPONDENT(S) ' EXHIBITS

NIL

TRUE COPY

P.S. TO JUDGE

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DEVAN RAMACHANDRAN, J.

WP(C) No.39632 of 2016

Dated this the 30th day of March, 2017

JUDGMENT

The petitioner, which is a First Grade College affiliated to the 1st respondent University, has filed this writ petition with the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writ or order directing the 1st respondent University to fix the workload and staff pattern in the courses of B.Sc. Physics, B.Sc. Chemistry, B.A. English and M.Sc. Mathematics in the petitioner's college, forthwith;

(ii) Issue a writ of mandamus or any other appropriate writ or order directing the 1st respondent University to accord sanction of additional posts in the subjects of Physics, Chemistry, subsidiary subjects of Mathematics & Computer Science, First Language English, Second Language Malayalam and M.Sc. Mathematics in the petitioner's college on the basis of the statement of workloads forwarded to the 1st respondent University, expeditiously.

(iii) Call for the records leading to Ext.P13, issue a writ of certiorari or any other appropriate writ or order, quash and set aside Ext.P13.

(iv) Grant such other relief this Hon'ble Court may deem fit and proper in the facts and

circumstances of the case.

(v) Award costs to the petitioners."

2. I notice that the issues and reliefs sought for in this writ petition are actually covered by the judgment delivered by this Court in ***State of Kerala v. Dr.Sina and others [ILR 2007 (3) Ker 122]***, a copy of which has been appended to this writ petition as Ext.P17. In the said judgment, this Court has already declared the law as under:

"9. We are of the view, above-mentioned provisions of the University Act, Statutes and Ordinances would clearly indicate that it is for the University to sanction the post as per clause (3) of Statute 14 of the Kerala University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statutes, 1979 in the case of private colleges coming under the Direct Payment Scheme, depending upon the work load and staff pattern fixed by the University. Once University accords sanction of a post and grants approval depending upon the work load and staff pattern, the Deputy Director of Collegiate Education shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and work load fixed by the University. If the University grants approval noticing that it is in accordance with the staff pattern and work load fixed by it the Director of Collegiate Education or the officers concerned are obliged to make payment of salary as per the direct payment scheme."

3. After so declaring the Law, this Court went on to say that

it is obliged on the part of the Government to release salary to the teachers, whose appointments are approved by the University. The relevant portion of such declaration is paragraph 12 of the said judgment, which is extracted hereunder:

"12. We allow all the writ petitions and declare that it is obligatory on the part of the Government to release salary due to the teachers whose appointments are approved by the University. Government have however no obligation to disburse salary, if appointments are made by the aided colleges, to a non-existent posts, when a new subject is sought to be introduced, or division is sought to be started, for which Government sanction is a pre-condition as provided under Section 57(1) of the University Act. Universities are also not expected to grant their approval in such a situation. For existing posts on grant of approval from the University on the basis of work load and staff fixation, Government and the officers authorised by the Government, have to honour the Direct Payment Agreement and release the salary due to the teachers. In view of the declaration of law made by us, Universities would process the request for approval of appointment and orders be issued accordingly without delay and on that basis, the Deputy Director of Collegiate Education would release the salary of the teachers."

4. In such circumstances, I am of the view that it is for the University of Calicut to make a consideration of the petitioner's claims and to take a view and conclude thereon under the

provisions of the applicable Statutes, Rules and Regulations. However, I am told by the learned counsel for the petitioner that when they made a proposal to the University in terms of Ext.P17 judgment, it has been rejected as per Ext.P13 proceedings stating that the Government has directed the University to postpone discussions for assessing the workload and teaching posts in private Colleges. I am certain that Ext.P13 cannot be relied on in conflict with the obligations of the University as declared by this Court in the judgment *supra*. When this Court has already declared that it is for the University to consider these issues, they will have to do it independently and without being dictated to any other Authority including the Government.

5. In such circumstances, I direct the University of Calicut to consider the proposal made by the petitioner in terms of the declaration of law contained in Ext.P17 judgment *de hors* what is stated in Ext.P13 and take a decision thereof after affording an opportunity of being heard to a representative of the petitioner as expeditiously as possible, but before the commencement of the next academic year, ie., 2017-2018.

This writ petition is thus ordered as above. In the peculiar facts and circumstances of this case, I make no order as to costs and I direct the parties to suffer their respective costs.

Sd/-

**DEVAN RAMACHANDRAN,
JUDGE.**

sp/07/04/17

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P.A. to Judge