



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 19TH DAY OF JANUARY 2018 / 29TH POUSHA, 1939

WP(C).No. 27493 of 2017 (J)

PETITIONER

DR. BINU GEORGE VARGHESE,
DIRECTOR OF PHYSICAL EDUCATION,
SCHOOL OF PHYSICAL EDUCATION AND SPORTS SCIENCES,
MAHATMA GANDHI UNIVERSITY, KOTTAYAM-686 560,
RESIDING AT KOOVAKATTU HOUSE, MANGANAM P.O.,
KOTTAYAM-686 018.

BY ADVS.SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN
SMT.S.LEENA
SRI.K.S.PRENJITH KUMAR

RESPONDENTS

- 1 MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS,
KOTTAYAM-686 560.
- 2 THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, ATHIRAMPUZHA, KOTTAYAM-686 560.
- 3 THE SYNDICATE,
MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY THE CHAIR PERSON,
PRIYADARSHINI HILLS, ATHIRAMPUZHA, KOTTAYAM-686 560.
- 4 DR. K. P. MANOJ,
GURUKULAM, COCHIN-682 023.

R1-R3 BY ADV. SRI.ASOK M. CHERIAN, SC.
R4 BY ADVS. SRI.R.MURALIDHARAN (AROOR)
SRI.PAVITHRAN RAVINDRA NATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-01-2018,
THE COURT ON 19-01-2018 DELIVERED THE FOLLOWING:

Hr....



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APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 THE PHOTOCOPY OF THE RANK LIST PREPARED BY THE SELECTION COMMITTEE CONSTITUTED FOR THE SELECTION OF ASSISTANT DIRECTOR, SCHOOL OF PHYSICAL EDUCATION AND SPORTS SCIENCE MAHATMA GANDHI UNIVERSITY NO. 26/2005/AV(3)/ADMN DATED 24.03.2006.
- EXHIBIT P2 THE PHOTOCOPY OF THE ORDER NO. 26/05/AV (3)/ADMN DATED 20.02.2006 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 THE PHOTOCOPY OF THE ORDER NO. 2955/AV(3)/2007/ADMN DATED 29.11.2007 ISSUED BY THE 1ST RESPONDENT DECLARING THE PROBATION OF THE PETITIONER.
- EXHIBIT P4 THE PHOTOCOPY OF THE ORDER NO. 5517/1988/AV-3/ADMN DATED 15.09.1988 OF THE 1ST RESPONDENT.
- EXHIBIT P5 THE PHOTOCOPY OF THE NOTIFICATION NO.ACL/1439/S/14/2000 DATED 14.06.2004 ISSUED BY THE 1ST RESPONDENT UNIVERSITY NOTIFYING THE AMENDMENT.
- EXHIBIT P6 THE PHOTOCOPY OF THE ORDER NO. ACL 1439/3/14/2000/VOL.II DATED 14.08.2006 OF THE 1ST RESPONDENT UNIVERSITY.
- EXHIBIT P7 THE PHOTOCOPY OF THE ORDER NO.553/AV(3)/2009/ADMN DATED 09.02.2009 ISSUED BY THE 1ST RESPONDENT UNIVERSITY.
- EXHIBIT P8 THE PHOTOCOPY OF THE MINUTES OF THE MEETING OF THE SYNDICATE HELD ON 08.04.2010.
- EXHIBIT P9 THE PHOTOCOPY OF THE ORDER DATED 20.04.2010 IN W.P.(C) NO. 13365/2010 OF THE HON'BLE HIGH COURT OF KERALA.
- EXHIBIT P10 THE PHOTOCOPY OF THE NOTIFICATION NO. 5517/88/AV (3)/ADMN DATED 01.06.2010 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P11 THE PHOTOCOPY OF THE ORDER NO. 2467/6705/AV(3)/2013/ADMN DATED 04.05.2013 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P12 THE PHOTOCOPY OF THE ORDER UO NO. 6363/AV(2)/2014/ADMN DATED 19.12.2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P13 THE PHOTOCOPY OF THE ORDER UO NO. 6394/AV(2)/2014/ADMN DATED 20.12.2014 OF THE 1ST RESPONDENT.
- EXHIBIT P14 THE PHOTOCOPY OF THE JUDGMENT DATED 02.12.2015 OF THIS HON'BLE COURT IN W.P.(C) NO. 13365/2010.
- EXHIBIT P15 THE PHOTOCOPY OF THE ORDER NO. 2392/AV-2/2015/ADMN DATED 28.04.2015 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P16 THE PHOTOCOPY OF THE ORDER UO NO. 3198/AV(2)/2014/ADMN DATED 08.06.2016 ISSUED BY THE 1ST RESPONDENT.



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EXHIBIT P17 THE PHOTOCOPY OF THE ORDER UO NO. 5973/AV(2)/2014/ADMN DATED 11.11.2016 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P18 THE PHOTOCOPY OF THE ORDER UO NO. 6374/AV(2)/2014/ADMN DATED 30.11.2016 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P19 THE PHOTOCOPY OF THE SHOW CAUSE MEMO NO. 5719/AV2/2016/ADMN DATED 29.12.2016 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P20 THE PHOTOCOPY OF THE EXPLANATION DATED 12.01.2017 SUBMITTED BY THE PETITIONER TO EXT. P19 SHOW CAUSE MEMO.

EXHIBIT P21 THE PHOTOCOPY OF THE ORDER NO. 2391/A.D.A5/2/2016 ADMN DATED 28.04.2017 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P22 THE PHOTOCOPY OF THE RESOLUTION NO. 236/17.03/171323 DATED 27.03.2017 OF THE 3RD RESPONDENT.

EXHIBIT P23 THE PHOTOCOPY OF THE SHOW CAUSE NOTICE NO.5719/AV2/2016/ADMN DATED 29.05.2017 OF THE 1ST RESPONDENT.

EXHIBIT P24 THE PHOTOCOPY OF THE LETTER DATED 14.06.2017 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P25 THE PHOTOCOPY OF THE LETTER NO. 5719/A5/2016/ADMN DATED 16.06.2017 OF THE 1ST RESPONDENT.

EXHIBIT P26 THE PHOTOCOPY OF THE EXPLANATION DATED 19.06.2017 OF THE PETITIONER TO EXT. P23 SHOW CAUSE NOTICE.

EXHIBIT P27 THE PHOTOCOPY OF THE ORDER U.O NO. 5033/AV(2)/2017/ADMN DATED 17.08.2017 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P28 THE PHOTOCOPY OF THE JUDGMENT DATED 10.07.2015 IN W.P.(C) NO. 9390/2012 OF THIS HON'BLE COURT.

EXHIBIT P29 THE PHOTOCOPY OF THE ORDER DATED 27.01.2017 IN SLP NO. 1559/2017 OF THE HON'BLE SUPREME COURT.

EXHIBIT P30 THE PHOTOCOPY OF THE LETTER DATED 31.05.2016 ISSUED BY THE THEN SECRETARY TO GOVERNMENT DEPARTMENT OF SPORTS TO THE PETITIONER APPRECIATING THE PETITIONER'S SERVICE AS THE SECRETARY, KERALA STATE SPORTS COUNCIL.



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EXHIBIT P31 THE PHOTOCOPY OF THE ORDER U O NO 1729/AV(2)/2015/ADMN DATED
27-03-2015 ISSUED BY THE 1ST RESPONDENT UNIVERSITY.

EXHIBIT P32 THE PHOTOCOPY OF THE COMMON JUDGMENT DATED 23-08-2006 IN
WP(C) NOS 37009/2004 AND CONNECTED CASES OF THIS HON'BLE
COURT.

EXHIBIT P33 THE PHOTOCOPY OF G.O (P) NO 10/2017/H.EDN DATED 19-03-2017.

RESPONDENT(S) ' EXHIBITS

NIL

// TRUE COPY//

P.S TO JUDGE.

Hr....



ANU SIVARAMAN, J.

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W.P.(C).No.27493 of 2017

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Dated this the 19th day of January, 2018

JUDGMENT

1. The petitioner challenges Exhibit P27 order of the University annulling resolution of the Syndicate dated 6.12.2014 by which the petitioner was promoted as Director of Physical Education in the School of Physical Education and Sports Sciences under the University. The petitioner had been appointed as Assistant Director in the School of Physical Education and Sports Sciences on 20.02.2006. The Director of Physical Education, who was in service, retired on 31.03.2009 and a vacancy therefore arose on 1.4.2009. A notification was issued for appointment to the post of Director on 1.6.2010. The petitioner had challenged the decision of the Syndicate dated 8.4.2010 to the extent it resolves to notify the post of Director of Physical Education by direct recruitment. Exhibit P10 notification was also challenged by the Association of College Teachers' on the ground that the qualifications prescribed therein were not in accordance with the Kerala University First Ordinances, 1978. Therefore, Exhibit P10 notification was cancelled by Exhibit



P11 dated 4.05.2013 on a finding that the notification was not in accordance with Kerala University First Ordinance, 1978 which was applicable to the Mahatma Gandhi University by virtue of sub-section (2) of Section 99 of Mahatma Gandhi University Act 1985. Thereafter, on 6.12.2014 the Syndicate of the University met and decided to appoint the petitioner as Director of Physical Education 'by promotion' in accordance with the First Ordinances. Exhibit P12 order dated 19.12.2014 was therefore issued by the University promoting the petitioner. The writ petitions preferred by the petitioner, the Association, as well as the other candidates against the notification of the post of Director of Physical Education were dismissed as infructuous, as the notification stood withdrawn by the University. However, by Exhibit P17 proceedings dated 11.11.2016, the petitioner was informed that on a complaint preferred by the 4th respondent, a Committee was constituted to conduct an enquiry into the allegations raised against the promotion of the petitioner. By Exhibit P19, a show cause notice was issued to the petitioner on 29.12.2016 requiring his explanation as to why the decision taken by the syndicate to



promote him should not be revoked. The petitioner submitted Exhibit P20 explanation. Thereafter, a fresh show cause notice was issued on 29.5.2017 also, to which also the petitioner submitted a detailed reply. However, by Exhibit P27 proceedings dated 17.8.2017, the explanation submitted by the petitioner was rejected and the promotion of the petitioner and the decision of the Syndicate to grant the same were annulled on the ground that the petitioner did not have the qualifications prescribed by the UGC in its 2010 Regulations.

2.The learned counsel for the petitioner contends that the petitioner had been promoted to a vacancy of Director of Physical Education which arose on 1.4.2009. The petitioner had all the qualifications prescribed for appointment/promotion to the post of Director as provided in the Kerala University First Ordinances which was made applicable to the respondent-university. When the university had sought to make appointments to the post of Director 'by direct recruitment' in terms of the UGC Regulations, the said action had been challenged before this Court by the Association of



College Teachers of Physical Education on the specific ground that such action was against the Kerala University First Ordinances and the prescriptions thereof. The petitioner also had challenged the notification for the post of Director and this Court had issued an interim order of stay of filling up of post. The University had considered the applicability of the First Ordinances and on finding that the notification was not in accordance with the First ordinances had decided to recall the same. It was thereafter that the petitioner had been appointed by promotion as Director against the vacancy which had arisen on 1.4.2009. The Syndicate while deciding to recall the notification issued for appointment to the post of Director, as also while deciding to promote the petitioner as Director had specially considered question of the applicability of the qualifications, method of appointment and eligibility as provided in the First Ordinances, which had been made applicable to the University. It was obviously on the finding that the notification was not in consonance with the First Ordinances that it had been withdrawn and the petitioner,



who was qualified going by the First Ordinances, was granted promotion against the vacancy which had arisen on 1.4.2009. It appears that what has weighed with the University in its endeavour to rescind his earlier decision was that a Full Bench of this Court in **Radhakrishna Pillai v. Travancore Devaswom Board** [2016 (2) KHC 119 (FB)] has held that the UGC Regulations would prevail over the University Statutes and ordinances in the matter of appointments to the posts which fall under the domain of such regulations. However, it is pointed out by the learned counsel for the petitioner that the selection in the instant case was to a vacancy which arose in 2009 when the UGC Regulations did not apply. Even in a case where the earlier decision of the syndicate is later found to be erroneous, it is contended that the syndicate would have no power to recall its earlier decision or to annul the same in view of the absence of a specific power of review under the University Act or First Statutes. It is further argued that the power to review, reconsider or annul the earlier decision of the syndicate is conspicuous by its absence in the MG



University Act or statutes. The learned counsel would place reliance on Exhibit P28 judgment which has been affirmed in appeal by a Division Bench. Relying on several decisions of the Apex Court it has been held that unless the power of review is specifically confirmed, the executive committee of the Kerala Agricultural University which is equivalent to the Syndicate of the MG University would have no power to rescind, review or cancel its earlier resolution.

3.A counter affidavit is filed by respondents 1 to 3 contending that the University had re-examined the matter on a complaint preferred by the 4th respondent and had found that the petitioner who was promoted as Director in 2014, did not possess the qualifications prescribed in UGC Regulations.

4.I have considered the contentions advanced on all sides. The provisions of the Kerala University First Ordinance, 1978 with regard to the method of appointment and qualification to the post of Director of Physical Education read as follows:-



<i>Sl.No.</i>	<i>Designation</i>	<i>Scale of pay</i>	<i>Age</i>	<i>Qualification</i>		<i>Method of recruitment</i>
				General	Technical	
1	2	3	4	5		6
xx	xx	xx	xx	xx	xx	xx
DEPARTMENT OF PHYSICAL EDUCATION						
104	Director	850-1450	Between 40 and 50 years	<p>(1) A Masters Degree in Physical Education with 55% marks or above. A Diploma in Coaching from a National Institute of Sports. OR Masters degree in Physical Education with 55% marks or above and with a record of having represented his University at the Inter-University level / State in the national championship (2) A Doctorate degree in Physical education.</p> <p>Experience:</p> <p>16 years experience in organizing games and sports handling of about half a dozen teams in a year in his institution and their participation in University/Inter-collegiate tournaments and ability to encourage mass participation in games and sports.]</p>		On the basis of merit inviting applications through the Press or by promotion on the basis of seniority and merit.

5. It is clear that the petitioner had been appointed as Director in a vacancy which was in existence from 1.4.2009. The UGC Regulations were made applicable by the acceptance of the same



by the Government of Kerala only w.e.f. 18.09.2010. Even before the UGC Regulations had been made applicable, the petitioner had raised a claim for appointment as Director of Physical Education. This Court had considered the claim raised by the petitioner and had ordered the University not to fill up the post of Director by direct recruitment. The notification for direct recruitment was later withdrawn by the University on a finding that the appointments were made in accordance with the Kerala University First Ordinances which were made applicable to the respondent University. It was thereafter that the petitioner had been appointed as Director by promotion. This was evidently considering his eligibility and qualifications with reference to the date of occurrence of vacancy. Since the UGC Regulations had not been adopted by the Government and made applicable either on the date of occurrence of the vacancy or on the date when the post was decided to be notified for direct recruitment, the University had decided that the appointment had to be in accordance with the First Ordinances applicable. In the facts and circumstances of this case, I find no error in the said decision of the Syndicate, since the vacancy was in existence



before the UGC Regulations came into force and the petitioner had been appointed taking note of the qualifications and eligibility as on the said date. I am also in respectful agreement with Exhibit P28 judgment to the effect that the power of review cannot be exercised by the syndicate unless such power is specifically provided for by the statute. In the instant case, I find no provision in the MG University Act or in the First Statutes enabling the Syndicate of the University to reconsider or cancel a decision taken by in earlier point of time.

6. In the above view of the matter, action taken by the University to annul its earlier decisions and orders promoting the petitioner to the post of Director Physical Education in the School of Physical Education and Sports Sciences cannot be sustained. Exhibit P27 as well as notices preceding the same are therefore set aside. The petitioner will be entitled to continue as Director of Physical Education under the 1st respondent University.

The writ petition is ordered accordingly.

Anu Sivaraman, Judge