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WP(C) NO. 11023 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 24TH DAY OF OCTOBER 2024 / 2ND KARTHIKA,

1946

WP(C) NO. 11023 OF 2024

PETITIONER:

DR. TARU. S PAWAR
AGED 52 YEARS
PROFESSOR, DEPARTMENT OF HINDI,
CENTRAL UNIVERSITY OF KERALA, PERIYE,
KASARGODE, PIN - 671320

BY ADVS.
V.GANGADHARAN
JOSHI N.THOMAS

RESPONDENTS:

- 1 CENTRAL UNIVERSITY OF KERALA
TEJESWINI HILLS, PERIYE P.O, KASARGODE,
REPRESENTED BY ITS REGISTRAR,
PIN - 671320
- 2 THE VICE CHANCELLOR
CENTRAL UNIVERSITY OF KERALA, TEJESWINI HILLS,
PERIYE P.O, KASARGODE,
PIN - 671320



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3 **PROF. (DR.) JOSEPH KOYIPPALLY JOSEPH**
DEPARTMENT OF ENGLISH AND COMPARATIVE
LITERATURE, CENTRAL UNIVERSITY OF KERALA,
TEJESWINI HILLS, PERIYE P.O, KASARGODE,
PIN - 671320

BY ADVS.

ADV RAMPRASAD UNNI T

ADV K.RAMAKUMAR (SR.)(R-245)

ADV PRASHANTH - STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 24.10.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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JUDGMENT

The petitioner is serving as Professor in Hindi Department of 1st respondent University. The grievance of the petitioner is pertaining to Ext.P5 order of the University, by which the 3rd respondent was appointed as the Dean of the School of Languages and Comparative Literature with effect from 01.08.2023 for a period of three years. According to the petitioner the 3rd respondent should not have been given appointment to the said post, by virtue of the rotation contemplated in Clause 5(1) of the Second Schedule of the Statutes of the University. The writ petition was submitted in such circumstances seeking the following reliefs:

“(i) Issue a writ of certiorari or other appropriate writ calling for records leading to Exts. P5 and P8 and quashing the same.

(ii) issue a writ of Mandamus or other appropriate writ or direction or order directing the 2nd Respondent to appoint the Petitioner as Dean of the School of Languages and Comparative Literature of the 1st Respondent University.

(iii) Declare that Petitioner is entitled to be appointed as Dean of School of Languages and



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Comparative Literature of the 1st Respondent University after completion of term of Dr. V.Rajeev.

(iv) Issue such other writ or order or direction to the Respondents as this Hon'ble Court may deems fit and necessary to the facts and circumstances of the case

(v) The English translation to the documents produced in vernacular languages may kindly be dispensed with."

2. The University filed a detailed counter affidavit in response to the averments contained in the writ petition, wherein the procedure followed by them while issuing Ext.P5 order was mentioned. Besides, it was also contended that the appointment of the third respondent was made by strictly following the stipulations contained in Clause 5(1) of Second Schedule of the University Statutes.

3. Heard Sri.Joshi N. Thomas, the learned Counsel for the petitioner and Sri.Prashanth, the learned Standing Counsel for the respondents 1 and 2. Even though notice has



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been issued to the 3rd respondent, there is no appearance for the same.

4. The main contention raised by the learned Counsel for the petitioner is that, the appointment of the 3rd respondent is not in tune with the stipulations contained in the Statute, as the 3rd respondent was already appointed as the Dean and had performed as such, in the University for the period from 13.03.2012 to 20.03.2015. According to the learned Counsel for the petitioner, as Clause 5(1) specifically contemplates for rotation among the Professors in the matter of appointment of Dean and since the 3rd respondent was already granted appointment, the turn of the 3rd respondent has already exhausted and the other Professors working in the Department has to be granted the opportunity.

5. On the other hand, the learned Standing Counsel for the University contends that, the earlier tenure of the



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appointment of the 3rd respondent cannot be treated as an impediment to consider the said respondent for the purpose of appointment of him as Dean, in view of the fact that, Clause 5(1) only contemplates a rotation among the Professors in the School, whereas at the time when 3rd respondent was earlier appointed as the Dean, the said respondent was not a Professor and he was only an Associate Professor. It was pointed out that, the appointment of the 3rd respondent was facilitated on that occasion, by virtue of the operation of Proviso to Clause 5(1) of the Second Schedule to the Statutes of the University, which contemplates for appointment of Associate Professors in the school by rotation in the order of seniority in certain circumstances. Therefore, it is pointed out that the appointment of the 3rd respondent now ordered, is perfectly justifiable.



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6. I have carefully gone through the records. The relevant Clause to be considered for the purpose of adjudicating the issue involved in this case is Clause 5(1), which reads as follows:

“5. Deans of Schools. -(1) Every Dean of School shall be appointed by the Vice-Chancellor from amongst the Professors in the School by rotation in order of seniority for a period of three years:

Provided that in case there is only one Professor or no Professor in a School, the Dean shall be appointed, for the time being, from amongst the Professor, if any, and the Associate Professors in the School by rotation in the order of seniority:

Provided further that a Dean on attaining the age of sixty-five years shall cease to hold office as such.

(2) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform duties of his office, the duties of the office shall be performed by the senior-most Professor or Associate Professor, as the case may be, in the School.



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(3) The Dean shall be the Head of the School and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School and shall have such other functions as may be prescribed by the Ordinances.

(4) The Dean shall have the right to be present and to speak at any meeting of the Boards of Studies or Committees of the School, as the case may be, but shall not have the right to vote thereat unless he is a member thereof."

On carefully going through the same, it is evident that it contemplates a rotation among the Professors in the order of seniority for a period of three years. The proviso also contemplates a situation that, when there is only one Professor or no Professor in a school, it shall be open for the University to appoint Associate Professors in the School by rotation in the order of seniority. On carefully going through the provision referred to above, it can be seen that the purpose behind the rotation contemplated therein is to provide an opportunity to the



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Professors to act as Dean (Associate Professor in certain circumstances). As far as the 3rd respondent in this case is concerned, he had already availed the said opportunity, while he was working as the Associate Professor, in view of the fact that, there existed certain circumstances as contemplated in the proviso to clause 5. Thus, the 3rd respondent had already availed the said opportunity and had completed a full tenure as envisaged in Clause 5. The reasons stated by the University that, the term of appointment, of the 3rd respondent pertaining to the period from 13.03.2012 to 20.03.2015 in a different capacity, cannot be treated as a valid reason in view of the fact that, irrespective of the nature of the post the candidate was holding at the time of appointment, the nature of the duties to be carried out as a Dean are the same. Therefore, when the purposive interpretation is given to the stipulations contained Clause 5, it can only be understood to



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mean that, the same was only intended to give rotation to the Professors in the school at the first instance and in the absence of Professors, an opportunity to Associate Professors. The specific case of the petitioner is that, despite the fact that, the 3rd respondent has already acted as Dean for a complete term while working as Associate Professor, a further opportunity was granted to him merely because of the reason that, by the time next term arose, he became a Professor. As mentioned above, in both occasions, the duty to be performed by the incumbent is that of a Dean, which has nothing to do with the post which the incumbent held at the time of the appointment. Thus, to ensure the implementation of Clause 5(1) in letter and spirit, the rotation has to be effected among the Professors in the order of seniority; however, while providing such an opportunity, the persons who already occupied the post have to be excluded,



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otherwise the purpose itself would be defeated. Therefore, I do not find any justifiable reason, in denying the said opportunity to the petitioner, if he is eligible to get the appointment as Dean, as per the seniority among the Professors.

In such circumstances, this writ petition is disposed of directing the 2nd respondent to reconsider Ext.P5 and take a fresh decision, after hearing the petitioner, the 3rd respondent and other affected parties, if any. A decision thereon shall be taken within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A., JUDGE

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APPENDIX OF WP(C) 11023/2024

PETITIONER EXHIBITS

- | | |
|-------------------|---|
| Exhibit P1 | TRUE COPY OF COMMUNICATION CUK/R/T NT/2014/VOL.11/C.1679 DT.18.07.2016 |
| Exhibit P2 | TRUE COPY OF CHARGE REPORT DT.18.07.2016 |
| Exhibit P3 | TRUE COPY OF VIDE ORDER CUK/ET/PF- 125/TSP/2016 DT. 22ND JULY, 2022 |
| Exhibit P4 | TRUE COPY OF VIDE ORDER NO. CUK/ET/PF_12/JKJ/2011 DT. 1ST OCTOBER, 2022 |
| Exhibit P5 | TRUE COPY OF VIDE ORDER NO. CUK/ACA,/270/15 DT. 31ST JULY, 2023 |
| Exhibit P6 | TRUE COPY OF REPRESENTATION DT.02.08.2023 TO THE REGISTRAR. |
| Exhibit P7 | TRUE COPY OF REPRESENTATION TO 2ND RESPONDENT DT.06.12.2023. |
| Exhibit P8 | TRUE COPY OF 1ST RESPONDENT UNIVERSITY VIDE ORDER NO. CUK/ACA/270/15/2688/J 3678 DT. 11TH DECEMBER, 2023 |



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RESPONDENT EXHIBITS

**EXHIBIT R1(a) TRUE COPY OF LETTER DATED
09.11.2023 SENT BY ONE PROF.
VINCENT MATHEW TO THE REGISTRAR OF
CENTRAL UNIVERSITY OF KERALA ALONG
WITH MINUTES OF MEETING AND THE
OBSERVATIONS OF THE COMMITTEE
MEMBERS**