

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4502 OF 2016  
(ARISING OUT OF SLP(C) NO.7556 OF 2014)

JIJI K.S. AND ORS

APPELLANTS

VERSUS

L. B. S. CENTER FOR SCIENCE &  
TECHNOLOGY & ORS.

RESPONDENTS

WITH

CIVIL APPEAL NO.4503 OF 2016  
(ARISING OUT OF SLP(C) NO.6953 OF 2015)

SHAJI.T.L. & ANR.

APPELLANTS

VERSUS

DR. P.G. JAIRAJ & ORS.

RESPONDENTS

O R D E R

C.A. NO.4502 OF 2016 @ SLP(C) NO.7556 OF 2014

1. Leave granted.
2. Application for impleadment is allowed.
3. The Civil Appeal is disposed of in terms of the order dated 26.4.2016 passed in SLP(C) No.28965/2014 and batch.
4. The said order shall hold good for this appeal as well.

C.A. NO.4503 OF 2016 @ SLP(C) No.6953 of 2015

1. Leave granted.

2-3. This appeal is directed against the common judgment of the Division Bench dated 16.12.2013 in Writ Appeal No.2706 of 2009 which arose out of WP(C) No.31862 of 2008 along with other connected appeals.

4. The Division Bench affirmed the common judgment dated 6.10.2009 of the Learned Single Judge passed in WP(C) No.31862 of 2008 and other connected cases. In fact, appellant-Shaji T.L. was not a party either in the writ petition dealt with by the Learned Single Judge or in the writ appeal dealt with by the Division Bench. However, since he was affected by the impugned judgment, he was granted leave to move the special leave petition and that is how this appeal by way of special leave came to be entertained. When the appeal by way of special leave was pending, one Smt. C.P. Mrinalini, who claims to be identically placed like that of the appellant was impleaded as petitioner No.2 in the special leave petition, based on the order of this Court dated 26.10.2015.

5. The original appellant-Shaji T.L. was appointed as lecturer on 16.11.1989. At that point of time, he possessed a degree qualification of Bachelor of Architecture. In 1994, he acquired the post-graduate degree, namely, M.Tech. On 15.7.1998, he was promoted as Assistant Professor and subsequently, on 4.6.2009 further promoted as Professor as per Special Rule 6A(1), which relaxed the possession of required qualification, namely, Ph.D.

6. After the judgment of the Division Bench, when the

appellants were reverted by order dated 16.12.2013 by virtue of the interim order granted by this Court, the said reversion was stayed.

7. The appellant-Shaji T.L. and the impleaded appellant-C.P. Mrinalini are, thus, continuing in the post of Professor. So far as, Smt. Mrinalini is concerned, she came to be appointed as Assistant Professor on 29.6.1996 by virtue of her post-graduate qualification, namely, M.Tech. Her promotion to the post of Professor came to be made under the same order dated 4.6.2009.

8. To briefly state the issues involved in the present litigation, we find that prior to 15.3.2000, the minimum qualification required for the post of Assistant Professor was first class Master's Degree in appropriate branch of Engineering/Technology. For the first time, by notification dated 15.3.2000, the All India Council for Technical Education (for short, "the AICTE") which is the authority to lay down the various norms including the one pertaining to staff qualification prescribed the possession of Ph.D. with first class degree in Bachelor's or Master's level in the appropriate branch of Engineering/Technology as the minimum required qualification.

9. Prior to 28.2.1989, that is the date when the Government of India approved the prescription of qualifications, as recommended by the AICTE, the appointments and promotions were governed by the Special

Rules prevailing in the State of Kerala which came to be formulated on 2.9.1967. After the enactment of All India Council for Technical Education Act, 1987 (for short, "the AICTE Act"), the whole of the technical education imparted by the various technical institutions were governed and controlled by the AICTE. The prescription of qualification, as approved by the Government of India on 28.2.1989, imperatively to be followed by all the technical institutions as well as the respective State Governments. The Government of Kerala issued G.O.(P) No.81/90/H.Edn. dated 27.3.1990 adopting the qualification prescribed in the Government of India in its direction dated 28.2.1989.

10. As stated earlier, there was a change in the prescription of qualification from mere possession of first class masters degree in appropriate branch of Engineering/Technology by notification dated 15.3.2000. The AICTE prescribed possession of Ph.D. with first class degree in Bachelor's or Master's level in the appropriate branch of Engineering/Technology as the minimum required qualification. The State of Kerala came forward to amend the Special Rules in tune with the said prescription by its notification dated 24.1.2003.

11. Subsequently, the State of Kerala introduced Rule 6A with sub-Rules (1) and (2) by way of an amendment, namely, Kerala Technical Education Services (Amendment) Rules, 2004

dated 18.9.2004.

12. We are concerned with Sub-Rule (1) of Rule 6A which pertains to the post of Professor. The said sub-rule reads as under:-

"6A. Exemption from qualification: (1) candidates appointed as Lecturers (pre-revised) in Engineering Colleges in the Technical Education Department on or before 27<sup>th</sup> March 1990, who have complete 45 years of age on the date of notification published for filling up the post of Professor, Joint Director (Engineering College Stream) and Director of Technical Education as the case may be, are exempted from acquiring Ph.D. Degree for eligibility for the above posts."

13. In the batch of writ petitions which were dealt with by the learned Single Judge, the challenge was to the whole of the said amended Rule 6A. In the connected appeals, we dealt with the cases relating to Assistant Professors who were governed by sub-rule (2) of Special Rule 6A and in this appeal, we are confining ourselves to the issue pertaining to sub-Rule (1) of 6A which concerns the post of Professors. The learned Single Judge struck down the whole of Special Rule 6A on the footing that the said amended sub-rule conflicts with the prescription of the minimum required qualification by way of norms set down by the AICTE in its notification dated 15.3.2000 and consequently, the said amended sub-Rule cannot be sustained. The said conclusion of the learned Single Judge having been affirmed by the Division Bench in the impugned judgment, the appellants are

before us.

14. We heard Mr. Jaideep Gupta, learned senior counsel for the appellants. He made as many as four substantive contentions while assailing the orders impugned in this appeal. According to the learned senior counsel, there was no variation between the norms laid down by the AICTE as well as the State Rules. So far as the prescription of qualification was concerned for the post of Professors, learned senior counsel then contended that it was in 2010, for the first time the statutory regulations were framed by the AICTE, wherein Ph.D. was prescribed as the minimum required qualification and, therefore, such prescription will have no effect in respect of those who came to be appointed prior to the year 2010. It was also contended that the Scheme of 2003 was not a statutory one and, therefore, the question of repugnancy did not arise viz-a-viz. the Special Rules of the State. Lastly, it was contended that even if the AICTE scheme is the statutory instrument, the doctrine of pith and substance will have to be applied, in which event as the said non-statutory instrument cannot override the statutory instruments, namely, the Special Rules, the prescription contained in the Special Rules alone will apply. In the course of hearing, on the above submissions of the learned senior counsel, we expressed our disinclination to countenance any of such

submissions canvassed before us. We were not inclined to countenance any of such submission, inasmuch as we were of firm the view that under Section 10(1)(i) of the AICTE Act it was for the AICTE to lay down the norms insofar as it related to prescription of qualifications for the teachers and other academic staff in technical institutions and that such prescription even made by way of norms, the same would come into operation instantaneously. We were not in a position to accede to the submission, that by virtue of Sections 23 and 24 of the AICTE Act, there would be a necessity for a gazette notification for the norms prescribed by the AICTE to become enforceable insofar as it related to the prescription of academic qualifications.

15. Be that as it may, the learned senior counsel drew our attention to the notification dated 5.3.2010 and submitted that the provision contained in the said notification which came to be issued both under Section 23(1) as well as Section 10(1)(i)&(v) of the AICTE Act will cover the issue. Under the heading "General" in paragraph (ii) it contains a provision to the following effect:-

"(ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D. and satisfies other academic conditions, as laid down by the AICTE from time to time. This shall, however, not affect those who are already designated as 'Professor'."

16. By referring to the said provision, Mr. Gupta, learned

senior counsel earnestly contended that the appellants herein are covered by the said provision, inasmuch as on or before 5.3.2010 whomsoever were designated as Professor will not be affected irrespective of whether or not prior to that date they possessed the minimum required qualification, namely, Ph.D.

17. To the above said submission, Ms. Seemantani, learned senior counsel appearing for the first respondent contended that the said provision found in the notification dated 5.3.2010 may not apply in the case of the appellants, inasmuch as the last part of the said provision was meant to be applied to those who had the benefit of getting designated as Professors under the carrier advancement scheme and not to those whose appointment came to be made under Section 31(a)(i) of the Kerala State and Subordinate Services Rules.

18. The learned senior counsel for the first respondent also contended that the appellants along with several others came to be promoted as Professors by the proceedings dated 4.6.2009 of the State Government by way of interim arrangement and not by undergoing regular selection process or under the carrier advancement scheme or by any directions given at the time when the order came to be issued and also they cannot bank upon the said paragraph (ii) of the notification dated 5.3.2010.



19. Such a contention of the learned senior counsel for the first respondent appears to be a possible view we do not find the necessity to examine the same in this appeal, inasmuch as we are only concerned with the correctness or otherwise of the impugned judgment by which the prescription contained in sub-Rule (i) of Special Rules 6A came to be struck down.

20. For examining the said issue, we find that the various contentions raised at the instance of the first respondent need not to be gone into. We, therefore, refrain ourselves from examining those issues and leave it open for the first respondent to urge the same, if so advised and required in accordance with law, in appropriate proceeding.

21. Leaving aside the same, when we examine the submission of Mr. Gupta, learned senior counsel, based on the said paragraph (ii) contained in the notification of the AICTE dated 5.3.2010, we find that, as rightly contended by learned senior counsel, the said notification having been issued under Section 10(1)(i) of the AICTE Act prescribed the minimum required qualification as from the date of the notification, namely, 5.3.2010. In the same breath, whatever protection provided in the said paragraph for those who were already designated as Professors will also hold good, which benefit, in our considered opinion, should be extended to the appellants without prejudice to the rights and

contention of the First Appellant.

22. We, however, hasten to add by stating so, it cannot be taken to mean that we have once and for all expressed our final view as to the status of the appellants as Professors as on date to hold good de hors the various contentions raised on behalf of first respondent by Smt. Seemantani, learned senior counsel.

23. In fact, while making reference to those contentions, we had kept it open for the first respondent to work out his remedy, if so advised in the manner known to law.

24. Having regard to our considered view based on paragraph (ii) of the notification dated 5.3.2010 of the AICTE, namely, that the prescription of possession of Ph.D. as the minimum required qualification for anyone to be appointed, promoted and designated as Professor on and after 5.3.2010, such prescription will have no effect on those who are designated as professors prior to the said date.

25. Since the appellants are holding the post of Professors as from 4.6.2009, the said relaxation contained in the latter part of the said paragraph (ii) should enure to their benefit de hors the prescription contained in sub-rule (i) of Special Rule 6A.

26. With that view, we protect the status of the appellants in their present post of Professors solely by virtue of paragraph (ii) of the notification dated 5.3.2010.

27. The appeal, accordingly, stands disposed of with the above reasons.

.....J.  
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.  
[S.A. BOBDE]

NEW DELHI;  
28TH APRIL, 2016

ITEM NO.1

COURT NO.6

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 7556/2014

(Arising out of impugned final judgment and order dated 16/12/2013 in WA No. 956/2012 16/12/2013 in WP No. 31502/2007 passed by the High Court of Kerala at Ernakulam)

JIJI K.S. AND ORS

PETITIONER(S)

VERSUS

L. B. S. CENTER FOR SCIENCE & TECHNOLOGY & ORS. RESPONDENT(S)

(With appln.(s) for impleadment and Interim Relief and Office Report)

(For Final Disposal)

WITH

SLP(C) No. 6953/2015

(With Office Report)

Date : 28/04/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA  
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Mathai M. Paikaday, Sr. Adv.  
Mr. Anas Shamnad, Adv.  
Mr. K. Ramesh, Adv.  
Mr. Shishir Pinaki, Adv.  
Mr. Sanjay Jain, Adv.

Mr. Jaideep Gupta, Sr. Adv.  
Mr. Jayant Muth Raj, Adv.  
Mr. Nishe Rajen Shonker, Adv.  
Mr. Ankur Joy, Adv.  
Ms. Anindita Mitra, Adv.

For Respondent(s) Ms. V.P. Seemantani, Sr. Adv.  
Mr. S. Radhakrishnan, Adv.  
Mr. Aljo K. Joseph, Adv.  
Mr. Abid Ali Beeran P., Adv.  
Mrs. Sudha Gupta, AOR

Mr. Ramesh Babu M. R., Adv.

UPON hearing the counsel the Court made the following  
O R D E R

C.A. NO.4502/2016 @ SLP(C) NO.7556 OF 2014

Leave granted.

Application for impleadment is allowed.

The Civil Appeal is disposed of in terms of the signed  
order.

C.A. NO.4503/2016 @ SLP(C) No.6953 of 2015

Leave granted.

The appeal is disposed of in terms of the signed order.

(SWETA DHYANI)  
SR.P.A.

(SHARDA KAPOOR)  
COURT MASTER

(Signed order is placed on the file)