

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021 / 24TH AGRAHAYANA, 1943

WP(C) NO. 26975 OF 2021

PETITIONERS:

- 1 DR. PREMACHANDRAN KEEZHOTH
AGED 50 YEARS
S/O. KANNAN, MEMBER, SENATE, KANNUR UNIVERSITY, THAVAKKARA,
KANNUR, ASSISTANT PROFESSOR, DEPARTMENT OF ENGLISH,
PAYYANNUR COLLEGE, EDAT POST, PAYYANNUR, KANNUR DISTRICT, RESIDING
AT VADAKKUMPAD HOUSE, KARIVELLOOR POST, KANNUR DISTRICT.
 - 2 DR. SHINO P. JOSE.
AGED 40 YEARS
S/O. JOSE, MEMBER, ACADEMIC COUNCIL (MANAGEMENT STUDIES),
KANNUR UNIVERSITY, THAVAKKARA, CIVIL STATION P.O, KANNUR - 670002,
RESIDING AT PALAKKAL HOUSE, RAJAPURAM P.O, KASARAGOD DISTRICT.
- BY ADVS.
GEORGE POONTHOTTAM (SR.)
NISHA GEORGE

RESPONDENTS:

- 1 THE CHANCELLOR
KANNUR UNIVERSITY, KERALA RAJ BHAVAN, KERALA GOVERNOR'S CAMP P.O,
THIRUVANANTHAPURAM - 695009.
 - 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF HIGHER
EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.
 - 3 KANNUR UNIVERSITY,
THAVAKKARA, CIVIL STATION P.O, KANNUR - 670002,
REPRESENTED BY THE REGISTRAR.
 - 4 DR. GOPINATHAN RAVINDRAN,
VICE CHANCELLOR, KANNUR UNIVERSITY, THAVAKKARA,
CIVIL STATION P.O, KANNUR - 670002.
- BY ADVS.
K.JAJU BABU (SR.)
ADVOCATE GENERAL
M.U.VIJAYALAKSHMI
SHRI.T.B.HOOD, SPL.G.P. TO A.G.
SHRI.C.E.UNNIKRISHNAN SPL. G.P TO A.G
SHRI.V.MANU, SENIOR G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 2.12.2021, THE
COURT ON 15.12.2021 SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Petitioners, member of the Senate and academic council of Kannur University, in the instant writ petition, have sought quashing of notification dated 23.11.2021 whereby the 4th respondent has been re-appointed to the office of Vice Chancellor of 3rd respondent University in continuation of the first appointment dated 22.11.2017 on various grounds. Submission of Sri.George Poonthottam learned senior counsel assisted by Sri.Navaneeth are summarised as follows:

2. (i) As per the curriculum of the 4th respondent published in the website of the Jamia Millia Islamia University, New Delhi, the date of birth of the 4th respondent is 19.12.1960, whereas, as per the provisions of sub section 9 of section 10 of the Kannur University Act, 1996, a person can hold office of Vice Chancellor only till the age of 60 years; in other words, at the time of second appointment, was over-aged.

(ii) In the procedure for appointment or continuation of the term of Vice Chancellor after expiry of 4 years from the date of initial appointment as per proviso to section 10(10) of the Act, there is no such clause of extension but only

appointment, thus, the notification impugned do not specify that there had been compliance of the procedure as notified vide notification dated 1.11.2021 inviting applications for selection of the Vice Chancellor by the selection committee, which was, for reasons best known, withdrawn on 22.11.2021 and the 4th respondent was appointed on the next date, 23.11.2021.

(iii). As per earlier terms of appointment on 22.11.2017 of the 4th respondent as Vice Chancellor, would have retired from office on 23.11.2021.

(iv) The notification Ext.P2 dated 01.11.2021 clearly prescribed that the experience should be as per provisions of clause 7.3(i) of UGC notification dated 18.7.2018. Clause 7.3(ii) of UGC Regulation, 2018 envisage that selection of Vice Chancellor should be through proper identification by a panel of 3-5 persons by a search-cum -selection committee through a public notification or nomination or a talent search process.

(v). In support of the aforementioned contention, following case law has been relied:

(a) **Rajesh Awasthi v. Nand Lal Jaiswal and Others**

[(2013) 1 SCC 501] when appointment is against the statutory provisions, writ of quo warranto would lie.

(b) Hari Bansh Lal v. Sahodar Prasad Mahto [2010 (3) KLT Suppl 123(SC)] objection qua appointment of the Chairman as impermissible, was rejected.

(c) Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Others [(2014) 1 SCC 161] that the doctrine of delay and laches would be inapplicable while adjudicating the issue of writ of quo warranto.

(vi) Since the appointment of the 4th respondent is in deviation of the University rules then would fall under term “Usurper” and this Court may not hasten in issuing the writ of quo warranto under Article 226 of the Constitution of India.

(vii) It is not a case of public interest as there is a thin fine distinction between the two.

3. On the other hand, learned Advocate General Sri. Gopalakrishna Kurup opposed the maintainability of the writ petition by raising the following submissions:

(i) UGC Regulations relied upon by the petitioners do not prescribe any age limit.

(ii) The proviso of sub section (10) of section 10 of 1996

Act in no way prohibits that the Vice Chancellor cannot hold the post for more than 4 years from the date on which he enters the office and shall be eligible for re-appointment with a proviso that appointment as Vice Chancellor cannot exceed two terms.

(iii) It is not a fresh appointment but an re-appointment as per the provisions of section 10(10) and therefore the procedure of constitution of the selection committee which was followed at the time of initial appointment in 2017 was not required to be followed for continuation of the term.

(iv) When the statute do not provide a method or term of appointment, the appointing authority is always under discretion in making the appointment.

(v) For maintaining quo warranto, the preliminary determination is required for granting of such relief and court must determine at the outset as to whether there has been a clear violation of statutory provisions and if there is any doubt it has to be resolved, upholding the appointment sought to be set aside.

(vi). In support of above submissions cited **Ram Tawakya Singh v. State of Bihar and Others** [(2013) 16

SCC 206] failure in following procedure of the appointment of Vice Chancellor, who was the principal executive, academic officer of the University, chairman of the Syndicate and Academic Council cannot be challenged by persons who were not the contestants, as petitioners are only members of the senate and academic council.

4. Tribunals Reforms Act, 2021 (Act No.33 of 2021) prescribes the eligibility for re-appointment of the Chairperson and member, in accordance with the provisions of the Act and all appointments shall be made in the same manner as provided in sub section (2) of section 3 of the said Act dealing with initial appointment. In other words, in case there is a specific provision in the Act then for re-appointment or continuation of the term the same procedure in the same manner should be followed as for initial appointment. There is no provision in the Kannur University Act similar to the one in the Tribunals Reforms Act.

5. I have heard counsel for the parties and appraised paperbook.

6. It would be apt to re-produce sub sections (9) and (10) of section 10 of the Kannur University Act, 1996 and

Regulation 7.3(i) and (ii) of UGC Regulations, 2018.

“10. The Vice Chancellor-

(1) xxx xxxxx

xxxx xxxxx

(9) No person who is more than sixty years of age shall be appointed as Vice-Chancellor.

(10) The Vice-Chancellor shall, hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment:

provided that a person shall not be appointed as Vice-Chancellor for more than two terms.”

"7.3. VICE CHANCELLOR:

i. A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.

ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons' of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection

Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum-Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities."

6. From the perusal of the provisions of Section 10, it is evident that Vice-Chancellor can be appointed by Chancellor on the recommendation of the committee appointed by him which consists of three members with one elected by Senate, another by Chairman of the University Grants Commission and third by the Chancellor. The chancellor shall appoint one of the members of the committee to his convenience and committee shall make its recommendation within a period of three months of appointment. University is not precluded to unanimously recommend the name of only one person and in that process, Chancellor shall appoint that person to be Vice-Chancellor, but, it may submit a panel of three names within the period and the Vice-Chancellor shall be appointed from among the persons in the panel. The aforementioned

procedure at the time of the initial appointment, for a period of four years, in 2017 was followed. The first term was expiring after the completion of four years and it is in that background, notice Ext.P2 was published but the Secretary of Department of Higher Education notified of withdrawal with immediate effect, for as per provisions of Sub section (10), Vice-Chancellor can be re-appointed, but the term is restricted to two (2).

It is now to be seen as to whether on the basis of statutory procedure provided in the Act *ibid* and on analysis of judgments cited, can this Court interfere in the process of appointment or not.

7. In ***Rajesh Aswathi v. Nandlal Jaiswal and others*** (supra) Supreme Court had posed a question of justification of the High Court in issuing a writ of quo-warranto in respect of an appellant therein in continuing as the Chairperson of the U.P. State Electricity Regulatory Commission on the ground that the selection committee had not complied with the provisions of Sub-section 5 of Section 85 of the Electricity Act, 2003. Sub-section 5 of Section 85 of the Electricity Act

provided that before recommending any person for appointment as the Chairperson or the Member of the State Commission, the Selection Committee shall satisfy if such person do not have any financial or any other interest likely to prejudice his functions as Chairperson or Member. The prime contention of the petitioners in the aforementioned writ petition was that the Selection Committee did not record such satisfaction. By noticing that once the language of the Act is crystal clear and unambiguous, when read literally it does not require further interpretation, accordingly it was held that the power has to be exercised by the Selection Committee alone and not by the Government. Noticing the non-compliance of the aforementioned provisions, as there was procedural violation it will vitiate the entire selection process; in this backdrop, the order of the High Court by issuing quo-warranto was upheld and the appeal was dismissed.

8. On the contrary, respondents in support of the contentions primarily relied upon judgment in **B.Sreenivasa Reddy** (supra) regarding the limitation of High Court in issuing a writ of quo-warranto much less the maintainability.

The aforementioned judgment laid down criteria for a preliminary determination required by the Court exercising power under Article 226 of the Constitution of India for granting of such writ petition. In other words, the High Court must at the outset determine as to whether the case has been made out for issuance of a quo-warranto. In other words, there has to be clear violation of law otherwise the writ would not lie and the decision would always be in favour of upholding the appointment sought to be set aside. The *ratio decidendi* culled out in the aforementioned judgment is that the writ cannot be issued merely on the basis of violation of official memorandum which is nothing but an administrative instruction. For the sake of brevity, paragraphs 76 and 77 of the judgment *ibid* reads thus:

76. The notification dated 31-1-2004 clearly states that the appointment is on contract basis and until further orders. While laying down the terms of appointment in its order dated 21-4-2004, the Government of Karnataka clearly stated that the "term of contractual appointment of Shri B. Srinivasa Reddy shall commence on 1-2-2004 and will be in force until further orders of the Government and this is a temporary appointment". Section 6(1) of the Act categorically states that the Managing Director shall hold office during the pleasure of the Government. The power

and functions of the Board are laid down in Chapter V of the Act. A reading of the Act clearly shows that neither the Board nor its Managing Director is entrusted with any sovereign function. Black's Law Dictionary defines public office as under:

"Public office- Essential characteristics of 'public office' are (1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of Government; key element of such test is that 'officer' is carrying out sovereign function. *Spring v. Constantino*. Essential elements to establish public position as 'public office' are: position must be created by Constitution, legislature or through authority conferred by legislature, portion of sovereign power of Government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control or superior power other than law, and position must have some permanency and continuity. *State v. Taylor*"

77. Carrying out sovereign function by the Board and delegation of a portion of sovereign power of the Government to the Managing Director of the Board and some permanency and continuity in the appointment are quintessential features of public office. Every one of these ingredients are absent in the appointment of the appellant as Managing Director of the Board. This aspect of the matter was completely lost sight of by the High Court.

8. In the aforementioned judgment it was a case of re-appointment of a Managing Director and not of a fresh

appointment. The impact of the aforementioned judgment reveals that the writ of quo-warranto would not lie if the alleged violation is not of a statutory provision, as it was found to be in violation of Statutes, Rules as the contender had experience in administration and in commercial matter before appointment, as Managing Director, on contract basis. But, writ of certiorari can be issued only at the instance of person who was qualified to the post or a candidate for the post. As per the provisions of Tribunals Reforms Act, there is specific statutory provision that even for "re-appointment", same procedure is required to be followed which was done at the time of initial appointment. However, there is no such provision in the Kannur University Act.

9. Thus on analysis of applicable laws what emanates while dealing with writ is two views are possible, i.e., when appointment falls either of two parameters laid down. Considering the pith and substance of the arguments for determination of the controversy raised in the background of the judgment cited above the question raised above is answered hereunder:-

10. The expression 'appointment' and 're-appointment' have different connotation; for undergoing the re-appointment the qualifications are prescribed under Clause 7.3 of the UGC regulations *ibid* and there is no age bar and for re-appointment, criteria of age would not be applicable. No doubt, for appointment, the entire procedure prescribed under Section 10 is to be followed. At the time of the initial appointment, in the year 2007, all the parameters were considered for appointment as per the procedure laid down therein but for re-appointment as per proviso to sub-Section (10) there is no requirement for undertaking the task of constitution of a Selection Committee as was done during the initial appointment. As per the pleading and submissions, there has not been any incident or lack of integrity, transparency as provided in the UGC regulations. Considering the provisions of applicable laws to my mind, notice Ext.P2 was withdrawn vide Ext.P3 on 22.11.2021 for the simple reason the party respondent ie., the 4th respondent was not disqualified at the time of initial appointment. It cannot be said that there was any violation of the statutory provisions

for reconsideration for the purpose of re-appointment, thus, in such circumstances, writ of quo-warranto cannot be issued.

11. This Court has been apprised of contents of I.A.No.1/2021 preferred by the petitioners with a prayer for issuing direction to call for the records leading to the appointment of the 4th respondent, which are in custody of the 1st respondent primarily on the ground that the Chancellor had written a detailed letter to the Chief Minister of the State covering so many unhealthy practices in academic appointments of the state, including the appointment under challenge. I am afraid that the aforementioned roving enquiry in a writ under Article 226 of the Constitution of India particularly quo-warranto cannot be entertained by invoking the powers as prescribed under Order 11 Rule 14 of the Code of Civil Procedure. The prayer in the application is rejected.

Accordingly this writ petition is dismissed.

Sd/-

AMIT RAWAL
JUDGE

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APPENDIX OF WP (C) 26975/2021

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE RELEVANT PAGES OF THE UGC NOTIFICATION DATED 18TH JULY 2018. |
| Exhibit P2 | TRUE COPY OF THE PUBLIC NOTICE BEARING NOTIFICATION NO. B2/88/2021/H.EDN ISSUED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF HIGHER EDUCATION DATED 01.11.2021. |
| Exhibit P3 | TRUE COPY OF THE ORDER/NOTIFICATION NO. B2/88/2021/H.EDN DATED 22.11.2021 ISSUED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, |
| Exhibit P4 | TRUE COPY OF THE NOTIFICATION NO. GS3-1283/2021(2) DATED 22.11.2021 PUBLISHED IN THE KERALA GAZETTE. |
| Exhibit P5 | TRUE COPY OF THE NOTIFICATION NO. GS3.1283/2021(3) DATED 23.11.2021 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT. |