

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 22ND DAY OF JUNE 2023/1ST ASHADHA, 1945

W.A.NO.27 OF 2023

AGAINST THE JUDGMENT DATED 17.11.2022 IN WP(C).NO.26918/2022 OF HIGH COURT OF KERALA

APPELLANT/5TH RESPONDENT IN W.P.(C).NO.26918/2022:

PRIYA VARGHESE
AGED 43 YEARS
D/O.K.C VARGHESE, PRAXIS, KANJIROD, KOODALI PO,
KANNUR DISTRICT, PIN - 670592

BY ADV.SRI.RENJITH THAMPAN (SR.) (K/276/1990)
BY ADV.SRI.K.S.ARUN KUMAR
BY ADV.SMT.AMRUTHA P S
BY ADV.SRI.VIJAY SANKAR V.H.
BY ADV.SMT.SRUTHY UNNIKRISHNAN
BY ADV.SRI.SAQIB RIZWAN
BY ADV.SRI.JERIN JOSEPH

RESPONDENTS/WRIT PETITIONER & RESPONDENTS 1 TO 4, 6 & 7 IN W.P.(C).NO.26918/2022:

- 1 DR. JOSEPH SKARIAH
AGED 52 YEARS, CHIRAKUZHY, THURUTHY P.O,
CHANGANASSETY, KOTTAYAM DISTRICT, PIN - 686535
- 2 CHANCELLOR OF UNIVERSITIES IN KERALA
KANNUR UNIVERSITY, KERALA RAJ BHAVAN,
KERALA GOVERNER'S CAMP PO,
THIRUVANANTHAPURAM, PIN - 695099
- 3 VICE CHANCELLOR (SELECTION COMMITTEE CHAIRMAN)
KANNUR UNIVERSITY, CIVIL STATION,
THAVAKKARA, KANNUR DISTRICT, PIN - 670002

- 4 SECRETARY, HIGHER EDUCATION DEPARTMENT
4TH FLOOR, ANNEX 11, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 5 THE SELECTION COMMITTEE FOR ASSOCIATE
PROFESSOR, (MALAYALAM)
KANNUR UNIVERSITY, REP BY ITS CONVENOR,
KANNUR UNIVERSITY, CIVIL STATION, THAVAKKARA,
KANNUR DISTRICT, PIN - 670002
- 6 THE REGISTRAR, KANNUR UNIVERSITY
CIVIL STATION, THAVAKKARA, KANNUR DISTRICT,
PIN - 670002
- 7 THE CHAIRMAN, UNIVERSITY GRANTS COMMISSION (UGC),
BAHADUR SHAH ZAFAR MARG, NEW DELHI, PIN - 110000

BY ADV.SRI.GEORGE POONTHOTTAM (SR.) (K/000570/1979)
BY ADV.SRI.SANTHARAM.P
BY ADV.SRI.P.RAVINDRAN (SR.)
BY ADV.SRI.I.V.PRAMOD, SC
BY ADV.SRI.S.GOPAKUMARAN NAIR (SR.)
BY SRI.T.B.HOOD, SPL.G.P. TO A.G.
BY ADV.SRI.S.PRASANTH, ADDL.CGSC
BY SRI.S.KRISHNA MOORTHY, SC, UGC
BY SRI.THOMAS ABRAHAM, SC
BY ADV.SMT.REKHA ARAVIND(K/2130/1999)
BY ADV.SRI.P.G.GOKULNATH (K/000170/2017)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
15.06.2023, THE COURT ON 22.06.2023 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

The facts in Brief:

This appeal is preferred by the 5th respondent in W.P.(C).No.26918 of 2022 aggrieved by the judgment dated 17.11.2022 of the learned Single Judge in the writ petition. The brief facts necessary for disposal of the appeal are as follows:

The writ petitioner Dr.Joseph Skariah is an Assistant Professor in the Department of Malayalam in St. Berchman's College, Changanassery. In the writ petition, he impugned Ext.P4 notification of the Kannur University that published the provisional rank list of candidates for selection to the post of Associate Professor [open category] in the Department of Malayalam under the University. In the said rank list, he was ranked second after the appellant herein, the 5th respondent in the writ petition, who was ranked first. It is significant that, in the writ petition, the Kannur University that had issued the notification was not made a party and, instead, it was only the Registrar of the University, who was the signatory to Ext.P2 notification issued on behalf of the University, that was arrayed as the 6th respondent

therein.

2. The case of the petitioner in the writ petition was that the appellant herein was not qualified to hold the post of Associate Professor that was notified for selection because;

- a. She did not have the prescribed minimum experience of 8 years in teaching and/or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/Industry;
- b. She was given disproportionate marks by the Selection Committee towards research score, research guidance, teaching experience and publications; and
- c. She was given more marks than the petitioner in the interview that and the same was in violation of all procedures and with a view to favour her.

3. Counter affidavits were filed on behalf of the 5th respondent/appellant, as also the Registrar of the University, refuting the contentions in the writ petition. Reply affidavits were also filed by the writ petitioner to the aforesaid counter affidavits. Thereafter, the matter was heard by a learned Single Judge.

The impugned judgment:

4. The learned Single Judge considered only the issue of whether the experience possessed by the appellant could be treated as teaching/research

experience for the purposes of deciding her eligibility to aspire for the post in question. The findings of the learned Single Judge in that regard are contained in paragraph Nos.46 to 110 of the impugned judgment, and they essentially hold that the experience gained by the appellant herein, while on deputation under the Faculty Development Programme at Kannur University, and as Director of Student Services at the Kannur University, cannot be treated as teaching/research experience for the purposes of Regulation 4.1.II of the UGC Regulations, 2018. As regards the objection raised by the appellant herein regarding the maintainability of the writ petition, inasmuch as the University had not been impleaded as a party in the writ petition, the learned Judge found that the objection had been raised only by the appellant herein and not by the Registrar of the University or any of the other respondents, and further that when the said Registrar who was on the party array had filed pleadings before this Court without raising such an objection, the absence of the University on the party array was not fatal to the cause of the writ petitioner. It is the above findings of the learned Single Judge that are impugned in this Writ Appeal.

5. We have heard Sri.Renjith Thampan, the learned senior counsel duly instructed by Adv.Sri.K.S.Arun Kumar appearing on behalf of the appellant, Sri.George Poonthottam, the learned senior counsel duly assisted by Adv.Sri.Santharam P. appearing on behalf of the 1st respondent/writ petitioner, Sri.P.Ravindran, the learned senior counsel duly assisted by

Adv.I.V. Pramod appearing on behalf of the 6th respondent Registrar, Sri.I.V.Pramod, the learned Standing Counsel appearing for the Vice Chancellor and Selection Committee of the Kannur University, Sri. S. Gopakumaran Nair, the learned senior counsel appearing for the Chancellor of Universities in Kerala, Sri.T.B.Hood, the learned senior Government Pleader appearing for the 4th respondent and Sri. S.Krishnamoorthy, the learned counsel appearing on behalf of the 7th respondent University Grants Commission [UGC].

The arguments in the appeal:

6. The submissions of Sri.Renjith Thampan, the learned senior counsel appearing for the appellant, briefly stated, are as follows:

- The writ petition was bad for non-joinder of necessary parties. It is highlighted that the Kannur University that had issued Ext.P2 notification, as also caused the Selection Committee to convene for the purposes of selection of the candidates pursuant to the said notification, and thereafter published Ext.P4 rank list notifying the candidates selected, was never made a party in the writ petition. That the Kannur University was a necessary party in the writ petition would also flow from the fact that the learned Single Judge, while disposing the writ petition, issued directions to the Kannur University for compliance. It is clear, therefore, that no decision as regards the legality of the actions of the Kannur University, and no directions in that regard, could have been taken/issued without the University being on the party array. Reliance is placed on **Chief Conservator of Forests, Govt. of A.P. v. Collector and Others - (2003) 3 SCC 472, Jogendrasinhji Vijaysinghji v. State**

of Gujarat and Others - [(2015) 9 SCC 1], Poonam v. State of Uttar Pradesh and Others - [(2016) 2 SCC 779], Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others - [(2012) 8 SCC 384], Kanaklata Das & Others v. Naba Kumar Das & Others - [JT 2018 (1) SC 576] to contend that the writ petition was bad for non-joinder of necessary parties.

- The teaching/research experience of the appellant, relevant for the purposes of her appointment as an Associate Professor, can be tabulated as follows:

Sl. No.	Institution and post held	Period of service	Experience
1	Assistant Professor, Sree Vivekananda College Kunnamkulam.	14.3.2012 to 28.07.2015	3 years 4 months and 15 days
2	Deputation for Faculty Development Programme at Kannur University (with active service and service lien at Sree Vivekananda College Kunnamkulam.)	29.07.2015 to 8.2.2018	2 years 6 months and 11 days
3	Assistant Professor, Sree Kerala Varma College, Thrissur.	09.02.2018 to 06.08.2019	1 year 5 months and 29 days
4	Director of Students Services, on Deputation to Kannur University	07.08.2019 to 15.06.2021	1 year 10 months and 9 days
5	Assistant Professor, Sree Kerala Varma College, Thrissur.	16.06.2021 to 06.07.2021	21 days

6	Assistant Director, Kerala Bhasha Institute, Thiruvananthapuram.	07.07.2021 to 21.10.2021	3 months 15 days
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Apart from that the appellant also had the following teaching experience:

1	Lecturer in Malayalam on Adhoc/Temporary/contract, University Teacher Education Centre, Kannur University.	27.06.2001 to 25.02.2002	8 months
2	Lecturer in Malayalam on Ad-hoc/ Temporary/ contract, University Teacher Education Centre, Kannur University.	05.06.2002 to 28.2.2003	8 months 24 days

- As far as the periods of service as Assistant Professor in Sree Vivekananda College, Kunnankulam and Sree Kerala Varma College, Thrissur are concerned, there is no dispute that the said services counted towards teaching experience.
- As regards the service rendered by the appellant while on deputation under the Faculty Development Programme at Kannur University, the appellant continued to have active service and service lien at Sree Vivekananda College, Kunnankulam during the period between 29.7.2015 and 8.2.2018 when she was sent on deputation for the Faculty Development Programme. The Tenth Plan Guidelines for Faculty Improvement Program (FIP) notified by the UGC, as also the Guidelines for the Special Scheme of Faculty Development Programme (FDP) for Colleges for the Twelfth Plan (2012-17) published by the UGC, indicate that the Faculty Improvement and Faculty Development programmes were introduced with the aim of enhancing the academic and intellectual

environment in the Institutions by providing faculty members with enough opportunity to pursue research and also to participate in seminars/conferences/workshops so that participation in such programmes would enable faculty members to update their research and pedagogic skills. The Programme envisaged eligibility requirements for being enrolled under the Program and only 20% of the permanent teachers were eligible to avail teacher fellowship from an Institution at any point in time. It is pointed out that there is a detailed procedure prescribed for availing the benefit of the Faculty Development Programme and the Programme also provides for the appointment of substitute teachers in accordance with the procedure prescribed by the UGC in place of the teachers that are chosen to pursue the Faculty Development Programme with a strict condition that in the event of the person selected for the Programme not completing the Programme within the time envisaged for the same, he/she would be liable to refund the entire costs incurred by the UGC for payment of salary and other allowances to the substitute teacher. Reliance is placed on Exts.R5 (j) and R5 (k) Government Orders to demonstrate that the appellant had been accorded sanction by the Government for undergoing the Ph.D. course for the period from 29.7.2015 to 8.2.2018 under the Faculty Development Programme of the UGC, on her executing a bond to comply with the conditions aforementioned. It was clear, therefore, that the deputation under the Faculty Development Programme was in the nature of a sanctioned Research Programme, that was undertaken with the permission of the employer institution, so as to augment the pedagogic skills of the appellant, which could then be utilised by the Institution/University. That being the case, the period spent on deputation for the Faculty Development Programme had to be treated as research experience that was simultaneous with teaching experience for the purposes of Regulation 3.11 of the UGC Regulations, 2018.

- The State Government has recognised the period spent on sponsored study as duty, as evidenced by Ext.R5 (e) and Ext.R5 (f) Government Orders which sanctioned the deputation of various persons for undergoing Ph.D. course under the Faculty Improvement Programme, and hence, a different stand cannot be taken in the case of the appellant without attracting the vice of discrimination under Article 14 read with Article 16 of the Constitution of India. Reliance is placed on the decisions in **Saheeda P. v. State of Kerala and Others - [2018 SCC Online Ker 10110]**; **Dr. Nirmala Mittal v. State of Haryana and others - [2007 SCC Online P&H 1502]**; **State of Haryana v. Smt. Nirmala Mittal - [2008 SCC Online P&H 1933]**; **Varghese v. State of Kerala - [1989 KHC 419]** that dealt with the purport of Faculty Development Programmes, to highlight that these programmes have been treated as valid research programmes that provide research experience.
- As regards the experience gained by the appellant while on deputation as Director of Student Services, and Programme Coordinator of the NSS, in the Kannur University, it is pointed out that the learned Single Judge decided the issue based solely on the averments of the appellant in her counter affidavit in the writ petition that the Director of Students Services activities were not really teaching activities in the strict sense. Reference is made to the extract of the Kothari Commission report that was re-produced in a judgment of this Court in W.P.(C).No.15447 of 2007 [Ext.R5 (v)], as also the extracts from the All India Survey on Higher Education (2010-11) published by the Ministry of Human Resource Development, Department of Higher Education, Government of India [Ext.R5 (w)] and the Draft National Curriculum Framework and Guidelines for Fostering Social Responsibility and Community

Engagement in Higher Educational Institutions in India, prepared by the UGC [Ext.R5 (z)] to point out that the UGC felt that new approaches to learning, based on dialogical, co-learning, participatory and problem-oriented methods were required for teaching existing curriculum. Reference is also made to the National Educational Policy of 1992, produced as Annexure-A along with I.A. No.1 of 2023 in the Writ Appeal, to demonstrate that recognition of outstanding contribution of teachers to the National Service Scheme had to be seen as an extension work under the third dimension of the University system as equivalent to research work for the purposes of incentivizing teachers, and to encourage their interest and participation in the National Service Scheme. Inasmuch as the appellant was appointed as a Programme Coordinator, she had important responsibilities for guiding students under the National Service Scheme and considering the importance granted to the Scheme under the National Policy of Education, the experience gained by the appellant while on deputation as a Director of Students Services had to be seen as teaching/research experience. Reliance is placed by the learned counsel on the decisions reported in **P. S. Ramamohana Rao v. A. P. Agricultural University and Another - [1997 KHC 1099]** and **University of Kerala and Others v. Dr. K.K. Venu and Others - [2014 (3) KHC 149]**.

- It is settled law that this Court will not ordinarily interfere with the decisions of academic bodies. In the instant case, the University had clearly relied on the statutory provisions based on which Ext.P2 notification had been issued and found the appellant to be satisfying the conditions of eligibility for the post of Associate Professor in Malayalam. The issue as to whether or not a particular experience qualified as teaching/research experience for the purposes of the statutory provisions or the UGC Regulations, 2018 was for the University to decide based on

its understanding of the prevailing concept of pedagogy recognised and regulated by the UGC.

7. The arguments of Sri. George Poonthottam, the learned senior counsel appearing on behalf of the 1st respondent writ petitioner, briefly stated are as follows:

- The writ petition was not bad for non-joinder of parties as the Registrar of the University was made a party and Section 14 of the Kannur University Act, 1996 clearly states that Suits by or against the University shall be instituted by or against the Registrar.
- The experience gained by the appellant while on deputation under the Faculty Development Programme or, as Director of Student Services, could not be treated as teaching experience for the simple reason that she, admittedly, did not engage in the activity of teaching students during the said tenure. It is not in dispute that the appellant had availed leave to pursue her Ph.D. under the Faculty Development Programme, and that being the case, she did not qualify for the benefit given under Regulation 3.11 of the UGC Regulations, 2018, to teaching faculty who could pursue their Ph.D. programmes without availing leave. Further, the appellant did not engage in any classroom teaching activity while she was on deputation as a Director of Student Services/ Programme Coordinator of the NSS and hence her experience while on the said deputation could not count towards teaching experience for the purposes of the selection notification.
- The experience gained by the appellant while working as Lecturer at the Teacher Education Centre at Kannur University on ad hoc/contract basis

cannot be reckoned towards teaching experience because the said service was rendered many years ago and was not on regular basis. That apart, the said service was as Lecturer and not as Assistant Professor.

- The 8 years of teaching experience stipulated for the post of Associate Professor is one that has to be gained after acquiring the basic qualification of Ph.D. prescribed for the post. The appellant obtained her Ph.D. qualification only in 2019 and hence she could not have had 8 years of teaching experience as a Ph.D. holder at the time of applying for the post of Associate Professor under Ext.P2 notification. Reliance is placed on the Full Bench judgment of this Court in **Basheer A. (Dr.) v. Dr. Saiful Islam A. and Others - [2014 (4) KHC 379]** in support of the said contention.

8. The submissions of Sri. P. Ravindran, the learned senior counsel appearing on behalf of the Registrar of the University, Sri. T.B Hood, the learned Government Pleader, and Sri. Krishnamoorthy, the learned Standing Counsel for the UGC were based on the counter affidavits filed by the respective parties in the writ petition.

The issues that arise for our consideration:

9. On a consideration of the facts and circumstances of the case, as borne out by the pleadings on record, and the arguments of learned counsel on either side, we are of the view that the following issues arise for our consideration viz.

1. Was the writ petition bad for non-joinder of parties?

2. Can the research period undergone by the appellant under the Faculty Development Programme of the Kannur University count towards the research experience of the appellant for the purposes of Ext.P2 notification read with the UGC Regulations of 2018?
3. Can the period spent by the appellant while on deputation as Director of Student Services of the Kannur University be counted towards the teaching experience required for appointment as an Associate Professor pursuant to Ext.P2 notification?
4. Can the period spent by the appellant as Lecturer at the Teacher Education Centre at Kannur University on ad hoc/contract basis be counted towards the teaching experience as Assistant Professor required for appointment as an Associate Professor pursuant to Ext.P2 notification?
5. Does the teaching experience of 8 years as Assistant Professor stipulated for the post of Associate Professor in Ext.P2 notification have to be gained after the candidate in question acquires the Ph.D. qualification?

Discussion and Findings;

Issue (1)

10. We deem it apposite to first deal with the objection raised by the appellant as regards non-joinder of necessary parties in the writ petition. In any adversarial litigation, the rule regarding joinder of parties is designed to ensure that the *lis* is not adjudicated in the absence of a party whose

presence before the court is essential for a complete resolution of the dispute. The law in this regard is well settled and it would suffice to refer to just the decision in ***Mumbai International Airport (P) Ltd***¹, where the Supreme Court, referring to Order 1 Rule 10 (2) of the Code of Civil Procedure [CPC], observed that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *domnus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. But the said general rule is subject to the provisions of Order 1 Rule 10(2) of the CPC that makes it clear that a court may, at any stage of the proceedings, either upon or even without an application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party; (a) any person who ought to have been joined as a plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

11. The court went on to state that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not

¹ Mumbai International Airport (P) Ltd v. Regency Convention Centre and Hotels (P) Ltd – (2010) 7 SCC 417

impleaded, the suit itself is liable to be dismissed. A proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

12. In the instant case, the main prayer in the writ petition was to quash the notification issued by the Kannur University and yet the University itself was not made a party in the writ petition. No doubt, the Registrar of the University was impleaded as the 6th respondent in the writ petition, presumably because Section 14 of the Kannur University Act prescribes that suits against the University be instituted in the name of the Registrar. That however could not have been a reason to ignore the provisions of Section 3 of the same Act that declares the University to be an independent body with perpetual succession and a common seal that can sue and be sued in its own name. The statutory provisions leave us with no manner of doubt that what is envisaged therein is that any suit or like proceedings initiated against the University be done in the name of the University, represented by its Registrar. As discernible from the observations of the Supreme Court in **Chief Conservator of Forests, Govt. of A.P²**, the statutory prescription that the University must be sued in its own name is not a mere procedural formality but essentially a matter of substance and

² Chief Conservator of Forests, Govt. of A.P. v. Collector and Others – (2003) 3 SCC 472

considerable significance. This is all the more so in a matter such as the present where the prayer in the writ petition was to quash a selection proceedings and the rank list drawn up by the University pursuant thereto. In a challenge against the decision of the University in an academic matter, the lis could not have been effectively adjudicated without ascertaining the University's justification for its decision. It is trite that in academic matters, the decisions of the University or other Educational body has to be given due weightage.

13. We certainly cannot agree with the finding of the learned Single Judge that merely because the Registrar of the University or any of the other respondents did not raise such an objection, it was not an objection that was worthy of consideration on merits. We cannot also accept the submission of the learned senior counsel appearing for the writ petitioner that the strict rules of pleadings and impleadment of parties applies only to proceedings before the civil courts and not to constitutional courts. In view of the settled law on the subject, and the specific provisions of Order 1 Rule 10 of the CPC, the principles of which are not alien to the writ jurisdiction, we find that the writ petition was indeed bad for non-joinder of necessary parties.

14. We might hasten to add at this juncture that while our finding on this issue would have sufficed to allow this writ appeal by dismissing the writ petition, insofar as the learned Single Judge in the impugned judgment

has entered findings therein against the appellant that touch upon her academic qualifications and experience, we feel it necessary to deal with the other issues raised in this appeal as well.

Issue (2)

15. In the impugned judgment, the learned Single Judge finds that the appellant could not have reckoned the period spent undergoing the Faculty Development Programme of the Kannur University towards the research experience of the appellant for the purposes of appointment as an Associate Professor pursuant to Ext.P2 notification read with the UGC Regulations of 2018. He also finds that the period spent by the appellant while on deputation as Director of Student Services of the Kannur University cannot be counted towards the teaching experience required for the same appointment.

16. To examine the legality of the said findings, we deem it apposite to first examine the extent to which research and community outreach programmes are recognised as integral aspects of pedagogy under the Indian model of Higher Education that is regulated by the UGC.

17. Mark Van Doren famously remarked, “The art of teaching is the art of assisting discovery”. His words resonate with the ideals informing the

Humboldtian model of Higher education that emphasizes the close integration of teaching and research. Under the said model, Professors are not only responsible for imparting knowledge to students but also engage in original research contributing to the advancement of knowledge. While the model advocates academic freedom, allowing scholars and students to pursue their interests and research without undue external influence or interference, it also emphasizes a well-rounded education, encouraging students to explore a wide range of subjects beyond their specific field of study so as to develop critical thinking skills, foster intellectual curiosity and promote inter-disciplinary understanding. The system values the cultivation of moral and ethical values, promoting the idea of education as a means of personal and societal transformation and encourages students to engage with societal issues and contribute to the betterment of society. The Humboldtian model has had a significant impact on higher education systems globally, shaping the principles of academic institutions worldwide, including in our country. Although, some countries have embraced a neo-liberal model of higher education in recent years, characterized by a shift towards marketization, increased competition and the application of business-like practices within universities that urged universities to concentrate their efforts on the diffusion and extension of knowledge rather than its advancement, and leaving it to the specialist research institutes to pursue research and discovery, some aspects of the former model appear to have found favour with the UGC in our country for the standards laid down

by them closely relate and approximate to the Humboldtian model. The legitimacy of the university academic in the Humboldtian tradition stems from the fact that they are actively conducting research at the same time as working as a teacher. In fact there are many who feel that no matter how skillful a teacher might be, without some form of research engagement they will fall short in a higher education context.³

18. The UGC Regulations, 2018, that have been adopted by the State Government and therefore apply to the Kannur University contain many provisions that indicate the extent to which research work is encouraged among the teaching community. While the Code of Professional Ethics prescribed for them under Regulation 17.0.I mandates, *inter alia*, that a teacher should seek to make professional growth continuous through study and research, Regulations 8 and 9 that deal with Study Leave and Research Promotion Grant respectively also point in that direction. A mere perusal of the provisions of Regulation 8.2 that deals with Study leave shows that it is a leave sanctioned solely for the purpose of enabling a teacher to undertake research projects or pursue doctoral research while he/she continues as a teacher of the University/College/Institution. While the teacher concerned undergoes a process of selection for the sanction of the leave, and is obliged to comply with onerous conditions in connection therewith, he/she gets the benefit of counting the leave period towards service as a teacher,

³ Bruce Macfarlane (2021): 'The Spirit of Research', Oxford Review of Education

notwithstanding that the University may appoint a substitute teacher in his/her place during the leave period. On completion of the leave period, the teacher is obliged to join the University/College/Institution concerned and undertake to serve there for a continuous period of three years from the date of resuming duty on the expiry of the leave period.

19. The provisions therefore clearly reveal a scheme of promotion of research among faculty members that the University/College/Institution then seeks to take advantage of by demanding the continued service of the teacher concerned. The Faculty Improvement Scheme, and the Faculty Development Scheme that replaced it, both notified by the UGC, contain the procedure to be followed for selecting upto 20% of the regular faculty of an institution for the conferment of research opportunities under the scheme. The said schemes and Regulations therefore effectively complement each other.

20. It is against the backdrop of the above scheme that is ingrained in the Regulations that one has to interpret the provision in Regulation 3.11 on which considerable arguments have been advanced before us. The said Regulation reads as under;

“3.11.- The time taken by candidates to acquire M.Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. Further the period of active service spent on pursuing Research Degree

simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/promotion. Regular faculty members upto twenty percent of the total faculty strength (excluding faculty on medical/maternity leave) shall be allowed by their respective institutions to take study leave for pursuing Ph.D. degree. (*emphasis supplied*)”

21. What is clearly discernible from a reading of the said provision is that a distinction is made between ‘candidates’ who are mentioned in the first limb of the provision and ‘faculty members’ who are referred to in the next two limbs of the provision – by implication in the second limb, and expressly in the third limb.

22. The prohibition against inclusion of the time taken for acquiring a Ph.D. degree in the computation of teaching/research experience is one that applies to ‘candidates’ by which term is intended a person who is not working as a teacher in any institution at the time of applying for the teaching post in question. ‘Faculty members’, on the other hand, refers to persons who are already working as teachers in an institution at the time of applying for the teaching post in question, and for them, the period spent on pursuing a research degree simultaneously with teaching assignment and without taking any kind of leave, will count towards teaching experience. In other words, merely on account of their having pursued a research degree simultaneous with their teaching assignment, their research period will not be excluded. Similarly, even those regular faculty members, upto 20% of the total faculty strength, who have availed study leave to pursue the Ph.D.

programme under the Faculty Development Programme, will get the benefit of including the period spent on pursuing a research degree in the teaching/research experience stipulated for the teaching post that is notified for appointment.

23. We are therefore of the view that the period spent by the appellant on pursuing her Ph.D. degree under the Faculty Development Programme cannot be excluded while reckoning her teaching/research experience in the post of Assistant Professor for appointment as an Associate Professor pursuant to Ext.P2 notification.

Issue (3)

24. As regards the period spent by the appellant while on deputation to the Kannur University as Director of Students Services/Project Coordinator of the National Service Scheme (NSS), we find that the learned Single Judge has essentially relied on the averments in the counter affidavit filed by the appellant in the writ petition, where she had averred that her job did not involve any teaching in the strict sense, to hold that the period spent on the said deputation cannot count towards teaching experience. In our view, the answer to the question as to whether or not the experience gained by a teacher, while on deputation to a non-teaching post, qualifies as teaching experience must depend upon the nature of activities undertaken

by the teacher in the post to which she is deputed and not merely by the classification - as teaching or non-teaching - accorded to the post. It cannot also be determined solely on the basis of the averments in her affidavit where she has merely stated that there was no teaching 'in the strict sense'.

25. The scope of the phrase 'teaching experience' can be determined only through an understanding of the true nature and scope of the word 'teaching' or 'pedagogy' itself. Changing conceptions of learning bring along corresponding changes in the conception of teaching. We have already alluded to the transformation in the models of higher education noticed globally, from the Humboldtian model to the Neo-liberal model to an eclectic mix of both in more recent times. The model of higher education pursued in our country can be gleaned from a perusal of the UGC Regulations as well as the National Education Policy in vogue. In Ext.R5 (z) document, which is an extract from the National Curriculum Framework & Guidelines published by the UGC in February 2019, there is a chapter on 'Fostering Social Responsibility & Community Engagement in Higher Education Institutions (HEI) in India' where it is clearly stated that the document emerged from UGC's long standing commitment to strengthen social responsibility and community engagement of Higher Education Institutions in India. It goes on to clarify that to achieve the objectives of socio-economic development of New India, HEI's can play an important role through active community engagement that will contribute to improvements in quality of both teaching

and research in HEI's in India. It calls for the development of institutional mechanisms to adopt a holistic and functional approach to community engagement, encompassing all the three functions of HEI's - teaching, research and service. It recommends that performance assessments of teachers, researchers and administrators in HEI's should include review of their involvement and contributions to community engagement in teaching and research; that criteria of weightage to community engagement by teachers and researchers should be explicitly included in assessments for recruitment, regularisation and promotion. While exploring the option of adapting existing courses for community engagement, it is stated as follows:

“The purpose of teaching is to enable learning of students. However, the reality of the present system of teaching in most HEI's is that students feel disempowered when taught only in the classroom style delivery of content. Despite advancement in teaching aids, infrastructure, updated curricula and pedagogies, students are unable to relate what they study in the classroom to the field realities in which they live and where they would work in future. Therefore, it is important that the classroom theory is linked to the realities of the local field areas. Thus, existing courses can be adapted, both in content and pedagogy, for community engagement to facilitate learning from the field. For instance, management curriculum may include aspects of micro-financing in rural context; chemistry syllabus can have a component of conducting water and soil analysis in surrounding field areas; political science syllabus could include mapping of local rural governance institutions and their functioning...[Engaged] teaching entails interaction of students with the curriculum and the world around the university. An engaged, outward, trans-disciplinary stance will enable enriching the curriculum and promoting learning in multi-modal pedagogies in addition to classroom and laboratories.”

26. Similarly, as early as in the National Education Policy of 1992 (produced as Annexure B along with I.A.No.1/2023) it was envisaged that special incentives be evolved to encourage teachers' interest and participation, quite apart from incentives to encourage and sustain

participation of students and youth in programmes under the National Service Scheme (NSS). It was also sensing the need for a responsible person such as a teacher to occupy the post of Programme Coordinator of NSS that the recruitment rule for the post prescribes that an aspirant to the post has to have teaching experience. Thus, merely because the post of Director of Student Services/Programme Coordinator of NSS is classified as a non-teaching post in the recruitment rules of the University, it does not follow that the incumbent in the post does not gain 'teaching experience' in the broader sense of the term.

27. We cannot also ignore the submission of Sri. T. B. Hood, the learned Government Pleader appearing on behalf of the State that a finding that the experience of a teacher in the post of Director of Student Services/Programme Coordinator of NSS is not teaching experience, would have disastrous consequences for the academic community in the State as no teacher would be willing to go on deputation to such posts for fear of losing out on career progression. We have to also remind ourselves, yet again, that when the University, which is an academic body, has chosen to treat the said experience of the teacher as 'teaching experience', then this court must defer to the wisdom of the academic body and refrain from interfering with the said decision unless it is shown to be clearly opposed to the statutory provisions in vogue. No material was produced by the writ petitioner to demonstrate an illegality in the decision of the University on

this aspect. We are therefore of the view that the period spent by the appellant on deputation as Director of Student Services/Programme Coordinator of NSS was rightly reckoned as teaching experience by the University while determining her eligibility to apply for the post of Associate Professor notified in Ext.P2 notification.

Issue (4)

28. The teaching experience cited by the appellant in her application for consideration to the post of Associate Professor, includes therein two spells of service as Lecturer at the Teacher Education Centre, Kannur University, on ad hoc/contract basis. The learned Single Judge found that the said spells of service cannot be reckoned towards valid teaching experience since they were rendered many years prior to the application aforementioned and, further, the said service was rendered as a 'Lecturer' and not as an 'Assistant Professor'. On a perusal of Ext.P2 notification, as well as the UGC Regulations, 2018, we do not find any prescription therein that suggests that the qualifying experience must be one that is attained proximate in point of time with the date of preferring an application seeking consideration for appointment to the post of Associate Professor. In its absence, it was not for this Court to introduce a requirement in the notification or the Regulations, which the academic policy makers did not deem necessary. That apart, the nomenclature of 'Assistant Professor' was

one that was introduced in later UGC Regulations to denote the entry level teaching post in a University, which was earlier known as 'Lecturer'. Thus, the post of Lecturer was merely re-designated as Assistant Professor and there was no qualitative change in the nature of duties attached to the post.

29. That said, we do find merit in the submission of the learned senior counsel for the writ petitioner that consequent to the re-designation as Assistant Professor, the qualification requirements for the post also changed and were made similar to those that were required of the erstwhile Senior Lecturers. In the case of the appellant, therefore, we have to see whether she was possessed of the necessary qualifications stipulated for an Assistant Professor under the UGC Regulations, 2018 at the time when she rendered her service as Lecturer at the Teacher Education Centre, Kannur University, on ad hoc/contract basis. We gather from the submissions of Sri. Renjith Thampan, the learned senior counsel appearing on behalf of the appellant that she had obtained her NET qualification by January 2002, and thereby stood possessed of all the qualifications prescribed for an Assistant Professor under the UGC Regulations, 2018. If that be so, then it follows that, while she cannot count her first spell of 8 months that was rendered prior to her attaining the NET qualification, the second spell of 8 months and 24 days from 05.06.2002 to 28.02.2003 would qualify as valid teaching service subject to her demonstrating that she qualifies for counting her previous ad hoc or contractual service as past service for the post of

Associate Professor, in terms of Regulation 10 (f) of the UGC Regulations, 2018.

Issue (5)

30. A contention that was raised by Sri. George Poonthottam, the learned senior counsel appearing for the writ petitioner was that the appellant herein did not satisfy the requirement of having 8 years teaching experience after the date of acquisition of her Ph.D. degree. He points out that the basic qualification prescribed for the post of Associate Professor in Ext.P2 notification as well as in the UGC Regulations, 2018 is a Ph.D degree and hence the further requirement under the Notification/Regulations that an aspiring candidate for the post must possess 8 years teaching experience as an Assistant Professor would mean that the candidate concerned had to be possessed of the stipulated teaching experience as Assistant Professor after acquiring the Ph.D. qualification. He relies on the provisions of Rule 10 of the KS&SSR that have been made applicable to the University under the Kannur University Act and First Statutes, as also the judgment of a Full Bench of this Court in **Basheer A. (Dr.) v. Dr. Saiful Islam A. and Others - [2014 (4) KHC 379]** in support of the said contention.

31. At the outset, we might observe that the above contention of the learned senior counsel was in fact considered by the learned Single Judge

but did not find favour with him. In the impugned judgment, the learned Judge brushes aside the said contention by holding the Full Bench decision as not applicable to the facts in the instant case and apparently agreeing with the submission made on behalf of the appellant herein that Rule 10 of the KS&SSR would apply only to cases where the statutory rules were silent on whether the experience prescribed should be before or after the date of acquisition of the basic qualification for the post. The appellant had contended that in the instant case, the statutory provision was clear in that the teaching experience of 8 years had to be in a candidate's capacity as Assistant Professor, which post did not mandate the possessing of a Ph.D. degree as requirement for continuing in the post.

32. At any rate, the writ petitioner is not in appeal before us against the judgment impugned in this appeal and hence we do not see the need to interfere with the finding of the learned Single Judge on the said issue.

33. We thus allow this Writ Appeal by setting aside the impugned judgment of the learned Single Judge, dismissing the writ petition and finding in favour of the appellant on all the issues enumerated in paragraph no.9 above, save in respect of the first spell of ad hoc/contractual service rendered by her at the Teacher Training Centre, Kannur University and covered by the discussion in relation to Issue (4). We declare that the appellant Mrs. Priya Varghese is entitled to:

- (i) Reckon the period spent by her on research under the Faculty Development Programme of the Kannur University towards the research experience stipulated under Ext.P2 notification read with the UGC Regulations of 2018;
- (ii) Reckon the period spent by her on deputation as Director of Student Services/Programme Coordinator of NSS of the Kannur University, towards the teaching experience required for appointment as an Associate Professor pursuant to Ext.P2 notification;
- (iii) Reckon the second spell of 8 months and 24 days from 05.06.2002 to 28.02.2003, spent by her as Lecturer at the Teacher Education Centre at Kannur University on ad hoc/contract basis towards the teaching experience as Assistant Professor required for appointment as an Associate Professor pursuant to Ext. P2 notification;

and that her candidature for the post of Associate Professor as notified in Ext.P2 notification shall be considered accordingly.

Post Script

34. Before parting with this case, we deem it apposite to make a few observations taking note of the media attention that this case received while it was being adjudicated before the learned Single Judge. It is trite that courts have necessarily to be cautious while interfering with the decisions of academic bodies for we are often dragged into unfamiliar territories while examining the legality of impugned decisions. We often encounter difficulties

while trying to appreciate the true scope and ambit of provisions couched in academic jargon, as there are invariably different context-based perspectives that can be adopted in a given case. On such occasions, prudence dictates that during the adjudication process, we give due weightage to the views of the expert academic bodies and interfere with their decisions only when there is a clear violation of the statutory provisions or when their decision is vitiated on any of the grounds that justify the exercise of the power of judicial review. That said, frighteningly frequent are those occasions when the impugned decision in academic matters attracts media attention for some reason or the other, and the court has then to deal with the added distraction brought about through incessant newspaper/channel discussions and overwhelming social media posts. It is for this reason that courts have time and again exhorted the print and electronic media to exercise restraint by deferring discussions on matters pending before the court so that the rule of law can be better served by avoiding an obstruction of the course of justice.

35. On its part, the media cannot be unmindful of the harm that is caused to a litigant's dignity and reputation through unjustified comments and remarks, often based on the oral remarks made by a judge during the adjudication proceedings, notwithstanding that the litigant ultimately succeeds in those proceedings. They must note that no less a constitutional functionary than the Chief Justice of India, had recently observed that not

everything that is said by a judge during the course of interaction with counsel in court can be taken as revealing the judge's views on the merits of the cause that is being adjudicated. While the right to a fair trial has long been recognised as forming part of the fundamental right of a citizen under Article 21 of the Constitution, in recent times, the right to privacy has also been recognised as forming part of the said right through the judgment of the Supreme Court in **K.S.Puttaswamy & Anr v. Union of India & Ors. - [(2017) 10 SCC 1]**. Even prior to the said judgment, the right to protect one's reputation was recognised as forming part of the fundamental right under Article 21 of the Constitution in **Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni - [(1983) 1 SCC 124]**. The International Convention on Civil and Political Rights, 1965 also recognises the right to have opinions and the right of freedom of expression subject to the right of reputation of others. The right has also been recognised in **State of Bihar v. Lal Krishna Advani - [(2003) 8 SCC 361]**.

36. Granville Austin in his treatise on our Constitution titled "*The Indian Constitution - The Cornerstone of a Nation*", states that while under our Constitution, the guarantee of fundamental rights is mostly seen as offering individuals and minority groups protection against arbitrary and prejudicial state action, there are provisions under the Constitution, such as Article 17, which abolishes untouchability, Article 15(2), which lays down

that no citizen shall suffer any disability in the use of shops, restaurants, wells, roads and other public places on account of his religion, race, caste, sex or place of birth and Article 23, which prohibits forced labour, that are designed to protect an individual against the actions of other private citizens. On account of its nature as a right that is personal to an individual, we are of the view that the newly recognised fundamental right to privacy, which takes within its fold the right to protection of one's reputation as well, would merit classification as a fundamental right that protects an individual, not only against arbitrary State action, but also against the actions of other private citizens, such as the press or media. We trust, therefore, that the media will take note of these observations and adopt a code of responsible journalistic conduct that will inform news reporting in the days to come.

The Writ Appeal is allowed as above.

**Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
MOHAMMED NIAS C.P.
JUDGE**

prp/

APPENDIX OF W.A.NO.27/2023

PETITIONER'S EXHIBITS:

Annexure-A A TRUE COPY OF THE RELEVANT PORTION OF
PROGRAMME OF ACTION, 1992 OF NATIONAL
POLICY ON EDUCATION

Annexure-B A TRUE COPY OF THE RELEVANT PAGES OF
NATIONAL SERVICE SCHEME MANUAL SHOWING
PARAGRAPH 17 OF CHAPTER 1 OF PART-I

Annexure-C A TRUE COPY OF THE RELEVANT PAGES OF
NATIONAL SERVICE SCHEME MANUAL SHOWING
CHAPTER 3 OF PART-IV

Annexure-D A TRUE COPY OF THE RELEVANT PAGES OF GO(P)
NO.58/2010/H.EDN DATED 27/03/2010

Annexure-E A TRUE COPY OF THE RELEVANT PAGES OF UGC
REGULATIONS ON MINIMUM QUALIFICATIONS FOR
APPOINTMENT OF TEACHERS AND OTHER ACADEMIC
STAFF IN UNIVERSITIES AND COLLEGES AND
MEASURES FOR THE MAINTENANCE OF STANDARDS
IN HIGHER EDUCATION, 2010 DATED 30/06/2010

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE