

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM

WP(C) No.

of 2021

Petitioners:-

1. Dr. Premachandran Keezhoth,
S/o. Kannan, aged 50 years,
Member, Senate,
Kannur University,
Thavakkara, Kannur.
Assistant Professor,
Department of English,
Payyannur College, Edat Post,
Payyannur, Kannur District.
Residing at Vadakkumpad,
Karivelloor Post, Kannur District.
2. Dr. Shino P. Jose,
S/o. Jose, aged 40 years,
Member, Academic Council (Management Studies)
Kannur University, Thavakkara,
Civil Station P.O., Kannur – 670002.
Residing at Palakkal House,
Rajapuram P.O., Kasargod District.

Vs.

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. Gopinath Ravindran,
Vice Chancellor, Kannur University,
Thavakkara, Civil Station P.O.,
Kannur – 670002.

MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA

All the notices and processes on the petitioner may be served on its Counsel M/S. GEORGE POONTHOTTAM & ASSOCIATES, ADVOCATES, PERANDOOR ROAD, KALOOR, KOCHI-682 017 and that of the respondents as shown above in the cause title.

STATEMENT OF FACTS

1. The 1st petitioner is an elected member in the senate of Kannur University and the 2nd petitioner is a member of the academic council of the same University. Apart from the above, the petitioners being Indian citizen and persons associated with academic matters and issues are deeply interested in the orderly functioning and working of the Universities in the State, more especially the Kannur University.

2. The petitioners are seeking a writ of *quo-warranto* as against the 4th respondent, since the 4th respondent is presently continuing as the Vice Chancellor of the 3rd respondent University a public office without a valid order or in other words without the status of a valid title to hold the office. As such the 4th respondent is an usurper in law.

3. Kannur University was established through Act 22 of 1996 as passed by the State Legislature, which had undergone several

changes subsequent thereto. Under Section 2(xxxiii) of the Kannur University Act, Vice Chancellor is defined to mean the Vice Chancellor of the University. Under Section 9 of the Act, the officers of the University are specified. The Vice Chancellor is first among the officers. As per Section 10 of the said Act, it is provided that the Vice Chancellor shall be appointed by the Chancellor on recommendation of a committee appointed by him. Under sub section (2) of Section 10, the composition of the committee is provided, though this had undergone a change consequent to the adoption of UGC Regulations. Under sub section (9) of Section 10, there is a statutory prohibition to the effect that no person who is more than 60 years of age shall be appointed as Vice Chancellor. Under sub section (10) of Section 10, it is provided that the Vice Chancellor shall, hold the office for a term of four years from the date on which he enters upon his office and shall be eligible for reappointment.

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

In so far as the case on hand, the provisions quoted above are the relevant provisions for determining the legal issues that the petitioners are raising as against the 4th respondent by issuing a writ of *quo-warranto*.

4. As per the curriculum vitae of the 4th respondent as published in the website of the *Jamia Millia Islamia University, New Delhi*, the date of birth of the 4th respondent is shown as 19.12.1960. When the eligibility of the 4th respondent is considered with reference to age as published in the website, the 4th respondent was eligible in terms of age and academic qualifications as he is satisfied the requirements as provided under Section 10 sub section (9) of the Kannur University Act, while he assumed office as the Vice Chancellor on 24th November 2017. However, to reappoint him as the Vice Chancellor, it requires the 4th respondent to satisfy the stipulation contained in sub section (9) of Section 10 and the procedure provided for the selection of a Vice Chancellor under the UGC Regulations. The UGC Regulation, now in force and applicable for the selection and appointment of Vice Chancellor and relevant pages of the same is produced herewith and marked as **Exhibit-P1**.

5. When viewed as above, it is mandatory to have the constitution of a selection committee as provided therein and the committee has to make their recommendations after identifying the credentials of persons with their eligibility, on issuance of notification as provided in the regulations. It is true and not in dispute that the 4th respondent had undergone the said process in

the year 2017 while he was appointed as the Vice Chancellor of the 3rd respondent University. He possessed the requisite qualifications and eligibility then to be appointed as the Vice Chancellor of the 3rd respondent University as provided in Section 10 sub section (9) of the Kannur University Act. As stated earlier, sub section (10) of Section 10 enables a person for reappointment and it only provides that he shall be eligible for reappointment. That eligibility is not a right and it is only enabling provision however subject to satisfying the requirements otherwise provided in the Kannur University Act and the UGC Regulations. In terms of the earlier appointment of the 4th respondent as Vice Chancellor of the 3rd respondent University by the 1st respondent on 22nd November 2017 and his assumption of office on 24th November 2017, he was required to demit his office on 23.11.2021. In view of the above, the 1st respondent Chancellor of the University had initiated steps by appointing a selection committee consisting of Dr. B. Ekbal, nominee of the senate, Prof. B. Thimme Gowda, nominee of the UGC and Prof. V.K. Ramachandran, nominee of the Chancellor as convenor through notification No. GS3-1283/2021 dated 27th October 2021. Following the constitution of the committee, the Additional Chief Secretary, Department of Higher Education had issued public notice inviting applications for selection of Vice Chancellor, Kannur University from eligible

candidates. It is provided in the said notification, that the qualification and experience are as prescribed in clause 7.3(i) of the UGC notification dated 18.07.2018. It is further provided that the applicants should not have completed 60 years of age as on the date of notification viz. 01.11.2021 as provided in Section 10 of the Kannur University Act. The public notice issued by the Secretary to Government, Department of Higher Education on 01.11.2021 in this regard is produced herewith and marked as **Exhibit-P2**.

6. There are two significant aspects in Exhibit-P2 notification. They are qualification and experience are as prescribed in clause 7.3(i) of the UGC notification dated 18.07.2018, viz. Exhibit-P1. Secondly applicants should not have completed 60 years of age on the date of notification viz. 01.11.2021 as provided in Section 10 of the Kannur University Act. Though steps were in progress for the selection of a new Vice Chancellor for the 3rd respondent University, surprisingly, the notification issued as per Exhibit-P1 on 01.11.2021 has been withdrawn by the Additional Chief Secretary to Government, Department of Higher Education. Copy of the order/notification dated 22.11.2021 is produced herewith and marked as **Exhibit-P3**. On the very same day, the constitution of a three member committee to tender its recommendation towards the appointment of a new Vice Chancellor also has been withdrawn

with immediate effect. Copy of the notification is produced herewith and marked as **Exhibit-P4**. On the next day, the office of the 1st respondent had issued a notification reappointing the 4th respondent as the Vice Chancellor of the 3rd respondent University for a period of four years w.e.f. 24th November 2021. A true copy of the notification issued from the office of the 1st respondent is produced herewith and marked as **Exhibit-P5**.

7. There are so much of debate in the academic circle that the re-appointment of the 4th respondent as the Vice Chancellor of the 3rd respondent University through **Exhibit-P5** is a valuable consideration for certain favoured actions. Irrespective of the merit or demerit of such widely spread debate in the academic circle, the petitioners are challenging the legal validity of Exhibit-P5 strictly on legal parameters and seeking a writ of quo-warranto in view of the statutory prohibition for the 4th respondent for being appointed as the Vice Chancellor in terms of sub section (9) of Section 10 of the Kannur University Act. Further, in terms of sub section (10) of Section 10, what is contemplated is a reappointment and not an extension of the period of appointment. It is worthwhile to mention in this connection, that while issuing Exhibit-P2 notification, following the constitution of the committee by the Chancellor, it was provided that the qualification and experience are as prescribed in clause 7.3(i) and that the applicant

should not have completed 60 years of age as on the date of notification. Under clause 7.3(ii) of the UGC Regulations, it is provided that 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. There are other conditions also provided therein. It is to satisfy the said requirement, the Chancellor issued a notification on 27.10.2021 constituting three members to recommend a panel. When reappointment is made by virtue of the provision contained in sub section (10) of Section 10, the law does not provides an exemption to be followed in the case of an incumbent who is holding the post of Vice Chancellor. While considering the question of reappointment, the candidate so considered shall initially satisfy the condition provided in sub section (9) of Section 10 and since there is no distinction between appointment and reappointment. Such an appointment can only be after satisfying the procedure provided under clause 7.3 in its entirety of UGC Regulations. Any other appointment as is presently made is an appointment which is ab-initio void and the person so appointed is not entitled to hold the post legally.

8. As the petitioners understand, the reappointment of the 4th respondent is not on the basis of an independent evaluation or

consideration of materials pertaining to the 4th respondent and that the decision was taken upon proposal/request made by the 2nd respondent, which unfortunately is a misfortune, as the 1st respondent ought not to have acted upon such request or recommendation, since Government, in law, has no say in the matter of appointment or reappointment of a Vice Chancellor. Exhibit-P5 is not an order giving charge to a person in the vacancy that had arisen for a short period. It is an appointment for a full term for which steps have been taken by appointing a three member committee and issuing notification in that regard.

9. In view of the above, the petitioners, who are deeply involved in academic matters are compelled to approach this court seeking a writ of quo-warranto as against the 4th respondent and the consequential relief quashing Exhibit-P5 order on the following among other:

GROUNDS

A. The Hon'ble Supreme Court of India had occasion to observe as follows:

It has been said long back "a society is well governed when the people who are in the helm of affairs obey the command of law".

While considering the scope of issuing a writ of quo-warranto, it was held by the Apex Court that a writ of quo warranto will lie

when the appointment is made contrary to the statutory provisions. This position has been reiterated several times by the Apex Court. When the legal requirement is examined in the above perspective for the issuance of the writ of quo-warranto, it is submitted that the present lis will satisfy the requirements enabling the High Court to issue a quo-warranto against the 4th respondent as the said appointment is contrary to the specific prohibition as contained in sub section (9) of Section 10 of the Kannur University Act. Equally so, the mandatory requirement provided under clause 7.3 of Exhibit-P1 Regulation also has not been followed while issuing Exhibit-P5. The fact that the selection and appointment of the 4th respondent in November 2017 was after undergoing the process of selection is no legal justification to bypass the said process and therefore, the appointment of the 4th respondent through Exhibit-P5 cannot be described as an appointment as per law. This is apart from the violation of sub section (9) of Section 10 of the Kannur University Act. The appointment is in violation of the specific mandate as contained in Section 10 of the Kannur University Act, which cannot be ignored by the 1st respondent while appointing or reappointing a person as the Vice Chancellor of the University. Therefore the petitioners seek the issuance of a writ of quo-warranto against the 4th respondent and a consequential order quashing Exhibit-P5.

B. The 1st respondent was conscious and aware of the legal requirements regarding eligibility and the procedure to be followed while appointing a Vice Chancellor of the University. The committee was constituted accordingly on 27.10.2021. Notification was issued in that regard strictly specifying the adherence of clause 7.3 of the UGC Regulations and the requirement as provided as regards age. Therefore it is submitted that all authorities, who are associated in the appointment of the Vice Chancellor of the University, were conscious and aware of the requirements including eligibility and procedure, as they cannot be compromised or diluted. However, surprisingly, those requirements were conveniently bypassed for unknown reasons, **at any rate, reasons which cannot be seen through naked eyes.**

C. The power exercised by the 1st respondent in the matter of appointment of a Vice Chancellor is a power to be exercised uninfluenced by any external interference. As the petitioners understand, the appointment of the 4th respondent is on the basis of a recommendation from the Government, though not exactly by following the rules of business. Appointments so issued by the 1st respondent can only be described as an unfortunate situation, as the law does not contemplate an appointment of Vice Chancellor in a University through the interference of external forces. The

appointment so made, is all the more a reason, for the interference of this court by issuance of a writ of quo-warranto followed by a writ of certiorari.

RELIEFS

For these and other reasons to be urged at the time of hearing it is most respectfully prayed that this Honourable Court may be pleased to:-

- i. Issue a writ of certiorari calling for the records leading to Exhibit-P5 and to quash the same;
- ii. Issue a writ in the nature of quo-warranto calling upon the 4th respondent to explain under what authority the 4th respondent is holding the office as the Vice Chancellor of the 3rd respondent University in violation of the statutory mandate;
- iii. Grant such other reliefs as this Court deems fit in the facts and circumstances of the case.

INTERIM RELIEF

For the reasons and averments made above it is most respectfully prayed to this Hon'ble Court to issue a writ of quo-warranto calling upon the 4th respondent to explain the authority under which the 4th respondent is continuing/holding the office as

the Vice Chancellor of the 3rd respondent University, pending disposal of the Writ Petition.

Dated this the 28th day of November, 2021.

Counsel for the Petitioners
BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

Petitioners

W.P.(C)No. of 2021

Dr. Premachandran Keezhoth & Another : Petitioners

Vs.

The Chancellor, Kannur University & Others : Respondents

AFFIDAVIT

I, Dr. Premachandran Keezhoth, aged years, S/o. Kannan, residing atVadakkumpad, Karivelloor Post, Kannur District, do hereby solemnly affirm and state as follows:

1. I am the 1st petitioner in the above writ petition. I am conversant with the facts of the case and am competent to swear to this affidavit. I am swearing to this affidavit on behalf of the 2nd petitioner also as authorised.
2. All the averments contained in the writ petition are true to the best of our knowledge, information and belief and we are entitled to the reliefs prayed for in the writ petition. The Petitioners have not filed any petition earlier seeking same or similar reliefs as sought for in the case.
3. The documents produced in the above writ petition are the true copies of the originals.

All the above facts are true and correct to the best of my knowledge information and belief.

Dated this the 28th day of November, 2021.

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this t the 28th day of November, 2021 in my office at Ernakulam.

Nisha George
Advocate

Presented on: 29.11.2021

Subject:- Challenge against Exhibit-P5, appointing the 4th respondent as Vice Chancellor in a writ of quo-warranto.

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OF THE CONSTITUTION OF INDIA

***M/S. GEORGE POONTHOTTAM
&
ASSOCIATES***

ARUN CHANDRAN (A-1186) (K/575/2008)
 NISHA GEORGE (N-404)(K/1109/2011)
 VISHNU J. (V-655) (K/855/2014)
 VISHNU B. KURUP (V- 679)(K/801/2015)
 A.L. NAVANEETH KRISHNAN
 (N-493) (K/777/2015)
 CHITHRA P. GEORGE (C-242)K/808/2015)
 LUKE J. CHIRAYIL (K/1528/2019)
 &
 ANSHIN K.K. (K/1249/2021)
 Advocates
 Perandoor Road, Kaloor,
 Ernakulam, Cochin – 682017

(Counsel for the Petitioners)

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

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| 7. | Exhibit-P4. True copy of the Notification No.GS3-1283/2021(2) dated 22.11.2021 published in the Kerala Gazette. | 19 - 20 |
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Dated this the 28th day of November, 2021.

Counsel for the Petitioners

Appendix

Petitioner's Exhibits:

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.

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: Petitioners

Vs.

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: Respondents

SYNOPSIS

. Hence this Writ Petition (Civil).

Dated this the 28th day of November, 2021.

Counsel for the Petitioners