
(2008) 09 KL CK 0066

In the High Court Of Kerala

Case No : Writ Petition (C) . No's. 33281, 33462 and 34172 of 2007

Ushamani, M. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Kerala University Act, 1957 — Section 57, 57(1), 57(2)
Mahatma Gandhi University Act, 1985 — Section 59(1)

Citation : (2008) 09 KL CK 0066

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and K. Radhamani Amma, Antony Mukkath, K.V. Joy and K. Ramachandran Thykoodam, for the Appellant; K.V. Manoj Kumar, Spl. Government Pleader for Respondents 1 to 3, T.A. Shaji, S.C. for Respondents 4 and 5 and Baby Issac Illickal, for 6th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—The main prayer in these writ petitions is to quash the order dated 31-10-2007 issued by the Mahatma Gandhi University declining to approve the appointment of Lecturers appointed in the St. Teresa's College, Ernakulam. There is a further prayer to direct the University to grant approval to the appointment of the Lecturers in terms of the provisions contained in the Mahatma Gandhi University Statutes. There are other consequential prayers also.

2. While W.P.(C) Nos. 33281 and 33462 of 2007 are filed by the concerned lecturers, W.P.(C) No. 34172 of 2007 is filed by the Manager and Principal of St. Teresa's College, Ernakulam. Since the issue involved is identical, these writ petitions are disposed of by this common judgment and for convenience, I shall be mainly referring to the pleadings and documents as they are marked in W.P. (C) No. 33462 of 2007.

3. As per the staff pattern fixed by the University in 2003, there were several vacancies of lecturers in the St. Teresa's College, Ernakulam (hereinafter

referred to as the "Management" for short). However, the vacancies could not be filled up on account of the failure of the State Government and the University to nominate their representatives to the Selection Committee. The Manager of the College filed a writ petition before this Court as W.P.(C) No. 22237 of 2004 praying for a direction to the State Government and the University to nominate members of the Selection Committee and the writ petition was disposed of by Ext. P-6 judgment dated 28-7-2004 directing that required steps be taken for enabling the Manager to fill up the existing vacancies in sanctioned posts.

4. According to the Petitioners in order to fill up the existing vacancies in sanctioned posts, Ext. P-1 vacancy notification was issued by the Principal of the College, inviting applications to open merit, permanent and leave vacancies, in subjects such as Mathematics, Physics, Chemistry, Botany, Zoology, Home Science, English, Economics, History and Physical Education. The Petitioners, being eligible candidates, submitted their applications. It is also stated that in compliance with Ext. P-6 judgment the Government of Kerala issued Ext. P-7 order dated 3-9-2004, permitting the Manager to fill up the existing vacancies in sanctioned posts. Thereafter, the State Government and the University deputed their representatives and Selection Committee was duly constituted. Accordingly, selection was held during February 2005 and select lists were prepared, in which among the Petitioners in W.P.(C) No. 33462/2007, Petitioners 1 and 2 were included at Rank Nos. 2 and 4 against the vacancy in the Chemistry Department. The 3rd Petitioner, was Rank No. 1 and the 4th Petitioner was selected against a leave vacancy, in the Home Science Department.

5. 15 candidates were appointed as lecturers in various departments. In so far as the Petitioners in W.P.(C) No. 33462 of 2007 are concerned, Exts. P-2 to P-5 are the orders of appointment, pursuant to which they joined service on 1-3-2005, 11-3-2005, 23-2-2005 and 7-3-2005 respectively. Petitioners 1 to 3 are continuing in the permanent vacancies to which they were appointed and the 4th Petitioner's leave vacancy, though expired on 31-7-2007, since the leave is continuing, it is stated that she is also continuing in that post. By Ext. P-8, the Principal of the College forwarded proposals to the University seeking approval of appointment of 15 the Lecturers mentioned therein, enclosing necessary documents.

6. University in its counter-affidavit has stated that in March 2005 they had received Ext. R-4(a) letter dated 31-3-2005 from a person complaining that though his daughter was an applicant for the post of lecturer in Economics and was eligible, the applicants were short listed as a result of which, his daughter was denied an opportunity to appear before the Selection Committee. According to the University, the Manager was intimated of Ext. R-4(a) and by Ext. R-4(b), it was replied stating that there were 33 applicants, that the Principal had short listed 16 of them for the interview and that they had not done anything against the statutory provisions. Thereafter, by Ext. R-4(c) the Manager again informed the University that there were 33 applicants against 3 sanctioned vacancies and

that all the applications were scrutinized based on marks in the basic degree, qualifying degree, additional degree, teaching experience, published work, research experience etc., and that 16 candidates were short listed for interview, which was more than 5 times the vacancies. It was also stated that the complainant's daughter did not come within the above group and hence was not called for interview.

7. The next communication received by the Management is Ext. P-11 informing that the University (Amendment) Act, 2005 came into force with effect from 6-1-2005, by which appointments to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorized by the Government and that the University is not in a position to approve the appointments made after 6-1-2005, till the posts are sanctioned by the Government. Petitioners state that while so, they, along with others filed W.P.(C) No. 9487 of 2006 before this Court for a direction to accord approval to their appointments. Meanwhile, the Manager filed Contempt of Court Case No. 1262 of 2006 complaining of disobedience of Ext. P-6 judgment in W.P.(C) No. 22237/2004. Pursuant to an order passed in the Contempt of Court Case, the Government issued Ext. P-12 order dated 5-12-2007, according approval to the appointments made to 13 posts mentioned therein, effective from the date of the order and clarified that salary will also be payable from that date. In view of Ext. P-12, it is stated that W.P.(C) No. 9487 of 2006 was disposed of directing that necessary orders be passed in the light of Ext. P-12 and giving liberty to the Petitioners to pursue their grievances if any, against the order making their appointment prospective.

8. Subsequently, on 3-5-2007 the University issued Exts. P-14 and P-15 to the College, alleging violation of the various provisions of the Mahatma Gandhi University First Statutes. According to the Manager on receipt of Ext. P-13, they gave Ext. R-6(a) reply, answering the allegations and contending that they had not violated the provisions of the University statutes. University would also say that on receipt of Ext. P-15, the Manager submitted Ext. R-4(e), which is also produced by the Manager as Ext. R-6(b), once again justifying their action. University would state that after justifying their action, the Manager of the College submitted Ext. R-4(f) apologizing for violating the statutory provisions and requesting to condone the mistakes of the governing body of the College.

9. Thereafter Ext. P-16 order dated 31-10-2007 was issued by the University, informing that the Syndicate Standing Committee on Affiliation at its meeting held on 23-10-2007 had resolved that the appointment of teachers in the College cannot be approved for the following two reasons:

(1) That all the eligible applicants were not called for the interview. There is written complaint against the selection process.

(2) The Mahatma Gandhi University Statutes 1997, Chapter 45 Part B, Statute 3(1) stipulates that the selection lists should contain three names for every

vacancy. In this selection, this statute is found violated by the Management.

10. In so far as W.P.(C) No. 33281 of 2007 is concerned, the Petitioners therein are also lecturers, who were selected in the selection process in which the Petitioners in W.P.(C) No. 33462 of 2007 were also selected and appointed and they are appointed in the departments of Chemistry, Zoology, History, Botany, Mathematics and Economics.

11. In the counter-affidavit of the University in so far as the order dated 31-10-2007, declining to approval to the appointment of the writ Petitioners in W.P.(C) Nos. 33281 and 33462 of 2007, is concerned, the University submits that the entire selection process was vitiated by serious violations of the statutory provisions. It is stated that all the applicants applied for the posts were not called for the interview and that the M.G. University Statutes did not permit screening or short listing of the candidates. It is also contended that under Statute 3(1) of Chapter 45B of the University statutes appointment in private colleges shall be made by the educational agencies from a panel of 3 names for every vacancy recommended by the Selection Committee. According to them statute 3(3) is subject to statute 3(1) and therefore it is essential to prepare a panel containing 3 names. It is also contended that they are entitled to ensure that appointments are made of meritorious candidates and that the selection is done in compliance with the statutes governing the same.

12. According to the University, in view of the University Law (Amendment) Act, 2005, the Government having sanctioned the post only by Ext. P-12 Order dated 5-3-2007, the University could not take up the proposal for approval prior to such approval. It is stated that the Manager had confessed the violations committed and had tendered apology for the same by Ext. R-4(f).

13. W.P.(C) No. 34172 of 2007 is filed by the Manager and the Principal of the College, they have pleaded the back ground in which Ext. R-4(f) letter dated 28-5-2007 produced by the University and referred to earlier, has been issued by them. In this writ petition Sri K. Mathew and Sri Jory Mathai, who were the Chairman and Member of the Syndicate Standing Committee for affiliation of the Respondent University have been impleaded in their personal capacity as Respondents 6 and 7. In the context of Ext. R-4(f), produced in this writ petition as Ext. P-8, the averments in paragraph 6 of the writ petition are important and hence, are extracted for reference:

Para 6.- It is submitted that on receipt of Ext. P-7 replies, the 7th Respondent contacted the 2nd Petitioner who was in Bangalore attending a course, over cell phone. He told that he had perused the files of the appointment and approval of teachers of the college and referring to the complaint he advised the 2nd Petitioner to request the 1st Petitioner to address the University admitting statutory violation, with a request to condone the same. If such a course of action follows, he assured that he would see that the appointments are approved without further delay. Out of the Petitioners' anxiety to obtain approval for the

appointments, and considering the agony of the teachers working for such a long time without getting any amount as salary, the 1st Petitioner without apprehending snare, followed the advise of the Syndicate Member and wrote to the 5th Respondent. A photocopy of the said letter dt. 28-5-2007 is produced herewith and marked as Exhibit P-8. Later on, the Petitioners discerned that it was a trap devised by the certain Syndicate Members to bargain with the Petitioners and the incumbents. The Petitioners never expected such an ignoble conduct from persons holding authority and position in the academic field. Subsequently, the 6th Respondent called the 2nd Respondent and told that an Enquiry Commission has been constituted, with him as the Convener. After a week, he again called the 2nd Respondent and required to meet him at the University. The 2nd Petitioner told him that since she did not receive any official communication she may not be able to meet him. After that, there was no response. To their shock, the Petitioners were told by a teacher who is awaiting approval to her appointment that the 6th Respondent advised her to persuade the teachers to join AKPCTA in order to facilitate their approval.

14. As stated above Respondents 6 and 7 in W.P.(C) No. 34172 of 2007 are impleaded in their personal capacity and against them personal allegations have been raised. However, they have not filed any affidavit by themselves and answered the allegations, but it is the Registrar of the University who has filed the counter-affidavit on their behalf.

15. The above allegations in paragraph 6 of the writ petition have been answered in paragraph 18 of the counter-affidavit in the following words:

The averments in paragraph 6 are also distorted. The Petitioners have been pursuing their request for approving the appointments. However, in view of the statutory violations the University was not in a position. The Petitioners made personal requests to the members of the Syndicate as well. It is only in response to that the 7th Respondent contacted to the 2nd Petitioner. The 7th Respondent had asked the 2nd Petitioner to address the University explaining the reasons and circumstances leading to the statutory lapses. But the 7th Respondent has never asked the 2nd Petitioner to admit the statutory violation for the purpose of condonation of the same. The contention of the Petitioners that Ext. P-8 was procured as dictated by the 7th Respondent is not true to facts. Ext. P-8 was submitted by the 2nd Petitioner on her own free will. Neither the 7th Respondent nor the University has got any reason to lay any trap to the Petitioners as alleged. The allegation against the 6th Respondent is wholly unsustainable. The allegation that the Petitioners were told by a teacher who is awaiting approval to her appointments that the 6th Respondent advised her to persuade the teachers to join AKPCTA in order to facilitate the approval is a concocted and false allegation. It is denied. The Syndicate of the University is not composed of the members of AKPCTA alone. There are members belonging to different organizations the affiliation of any members, political or otherwise, if at all there is any, has nothing to do with the decisions of an august body like the Syndicate

of the University. The averments and allegations of the Petitioners in this regard is obviously intended to ridicule and belittle the University and its officers in a bid to derive undue advantage, it is submitted.

16. It is in this background the contentions raised by both sides will have to be appreciated.

17. Counsel for the Petitioners contended that in Ext. P-16 order dated 31-10-2007 the University had assigned only two reasons for declining approval to the appointments. According to them since the legality of this order is under challenge in these writ petitions, the validity thereof should be tested in the light of those reasons and that it is not permissible for the University to supply additional reasons through the counter-affidavit filed in these writ petitions to sustain the said order. Reliance was placed on the Apex Court judgment in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

18. Learned Counsel for the Petitioners is justified in his submission that only two reasons are stated in Ext. P-16 order and therefore the validity of the order has to be tested in the light of those two reasons, as held by the Apex Court in its judgment in Mohinder Singh Gill's case, para 8 of which is extracted below for reference:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older. A Caveat.

19. The first reason stated in Ext. P-16 is that all the eligible applicants were not called for interview. The fact that all applicants were not called for interview is not disputed by the management and their justification is that among the applicants, they had shortlisted the candidates to be called for interview. In view of this, the question is whether the management had the authority to shortlist candidates and if so, whether the shortlisting was done based on any reasonable and acceptable criteria.

20. When the available vacancies are few, and the number of applicants is large, it is always open to the management to restrict the zone of consideration, subject to any minimum prescribed in the rules. If there is no such prescription, management need only ensure the availability of reasonable number of candidates as against the number of vacancies that are to be filled up, following a reasonable criteria. This right of the management, to shortlist the candidates cannot be doubted, so long as the criteria adopted is fair and reasonable in the light of the judgments in Union of India and another Vs. T. Sundararaman and others, , Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, and Jayakumar v. High Court of Kerala 2001 (2) KLT 924. Therefore I cannot accept the plea of the University that the Management was incompetent to short list candidates. The further question is whether there was sufficient number of short listed candidates for selection. University has not raised such an argument and therefore it is not necessary for me to consider that issue.

21. Then what remains is whether the Management had followed an acceptable and reasonable criteria for shortlisting the candidates. The basis of on which shortlisting has been done is stated in Exts. R-4(c) and R-4(e) letters of the Management. The relevant portion of Ext. R-4(e), is extracted below for reference:

However, the circumstances under which the screening was done is give below:

The District Collector, Ernakulam was the Government nominee in the Staff Selection Committee. The District Collector was very busy during the period of interview due to tsunami and he was kind enough give two days to participate in the staff selection committee on condition that the entire interview and selection for all subjects should be completed within two days given by him.

Accordingly all the applications were scrutinized based on the marks in their basic degree, qualifying degree, additional degree, teaching experience, published works, research experience etc. On the basis of the above screening the candidates upto 3 to 5 times of the vacancies were called for interview. This is permissible as per the judgment of the Hon''ble Supreme Court in State of Punjab and Others Vs. Manjit Singh and Others, .

It can be seen from the above that the criteria adopted by the Management are the marks obtained by the candidates in their basic degree, qualifying degree, additional degree, teaching experience, published works, research experience, etc. It is also stated that they had shortlisted candidates upto 3 to 5 times the vacancies. The aforesaid criteria are certainly reasonable, fair and valid and by this process, as the College had ensured the availability of candidates" upto 3 to 5 times vacancies, I do not find anything irregular or illegal in the action of the management in shortlisting the candidates.

22. The second reason stated in Ext. P-16 is that the statute 3(1) of Chapter 45B of the University statutes stipulate that select list should contain 3 names for every vacancy and that this provision was violated. The correctness of this

contention has to be tested in the light of the statute itself. Statutes 3(1) and 3(3) Chapter 45B being relevant, are extracted below for reference:

(1): In order to ensure that appointments of teachers by direct recruitment are on the basis of merit, such appointments shall be made by the Educational Agency from a panel of three names for every vacancy recommended by a selection committee constituted by the Educational Agency and consisting of the following members, namely:

- a. two representatives of the Educational Agency nominated by it, one of whom shall be the Chairman of the Selection Committee;
- b. The Principal of the College;
- c. The Head of Department in the subject concerned; and
- d. one expert in the subject nominated by the Vice-Chancellor.

(2):

(3): Notwithstanding anything contained in Clause (1), in the case of any Educational Agency which has voluntarily entered into a written agreement with the Government for the direct payment of salaries to the teachers and the non-teaching staff of its Arts, Science or Training Colleges, appointments of teachers, whether provisional or permanent, shall be made only from a list of persons prepared by a selection committee constituted by the Educational Agency and consisting of the following members namely:

- (a) two representatives of the Educational Agency nominated by it;
- (b) a person nominated by the Educational Agency from amongst the Principal, Heads of Departments and Professors of the College or where the Educational Agency has two or more colleges, from amongst the Principals, Heads of Departments and Professors of all those Colleges:

Provided that before making any such nomination, the Educational Agency shall obtain the concurrence of the University;

- (c) one member chosen by Educational Agency from amongst the officers of the Secretariat not below the rank of Joint Secretary to the Government and the District Collectors:

Provided that if for any reason the Government consider that the Officer chosen by the Educational Agency cannot be deputed to the Selection Committee, the Educational Agency shall choose an other Officer from amongst the said categories;

- (d) one expert chosen by the Educational Agency from a subject-wise list of experts prepared by the University containing not less than five members and made available to the educational agency on its request at the beginning of each academic year:

23. A reading of Statute 3(1) shows that in order to ensure that appointment of teachers by direct recruitment are on the basis of merit, such appointments shall be made from a panel of 3 names for every vacancy, recommended by a selection committee constituted in the manner provided therein. However, statute 3(3) provides that notwithstanding statute 3(1) in the case of an educational agency which has entered into direct payment agreement, appointment of teachers shall be made from a list of persons prepared by a selection committee constituted in the manner provided therein. Constitution of the Selection Committee in so far as per statutes 3(1) and 3(3) are also different. University has no case that the college has not entered into direct payment agreement. If that be so, what is relevant is statute 3(3) and unlike statute 3(1), statute 3(3) does not prescribe the requirement of a panel of 3 names, but only provides that appointment of teachers shall be made only from a list of persons prepared by a selection committee. Therefore as far as the college is concerned, it is governed by statute 3(3) and there is no requirement of a panel of 3 names for every vacancy. I do not find any substance in the plea of the University that statute 3(3) of Chapter 45B is subject to statute 3(1), since such an interpretation is against the plain terms of the statute itself. Hence the 2nd reason assigned in Ext. P-16 is also unacceptable.

24. Thus, both the reasons stated by the University in Ext. P-16 are unsustainable and therefore the rejection of approval is illegal.

25. That apart, approval of appointment is to be done by the Syndicate and its power in this behalf is specified in statute 16 of Chapter 45B. It is provided that approval of every appointment shall be made by the Syndicate subject to the condition that appointment is in accordance with the staff pattern fixed by the University and that the person appointed is fully qualified for the post. It is settled law that the powers of a statutory authority are circumscribed by the limits in the statute which creates it and anything done in excess of the statutory power is ultra vires and cannot be sustained. In this case, it is nobody's case that the appointments of the Petitioners in W.P.(C) Nos. 33281 and 33462 of 2007 are not as per the staff pattern fixed by the University or that they are not fully qualified for the posts to which they were selected and appointed. On this ground also Ext. P-16 cannot be upheld.

26. Counsel for the University contended that if their power of approval is confined to statute 16 of Chapter 45B, that will not give them the power to ensure that the appointees are meritorious candidates or that selection has been properly done. In my view this argument is only to be rejected in view of the provisions contained in statute 16 and fact that the Selection Committee is a statutory one constituted as per statute 3(3) consisting of experts, including the nominees of the government and experts from the list prepared by the University. That apart, in this case, University does not have such a case in Ext. P-16.

27. Now what remains is the argument of the University that by Ext. R-4(f) the

Manager had confessed the mistake and apologized for the same. As already stated, in W.P.(C) No. 34172 of 2007 filed by the Manager and the Principal of the College, they have pleaded the background facts and made allegations against Respondents 6 and 7 therein, who have been impleaded in their personal capacity. They have not chosen to answer the allegations which are fully within their personal knowledge. On the other hand it is the Registrar of the University who has chosen to deny those allegations and I cannot accept the affidavit of the Registrar in this behalf. Even otherwise since the two grounds on which approval has been declined by the University are found to be invalid, the alleged confession made by the Manager, can be no reason to justify the action of the University.

28. The Petitioners in W.P.(C) No. 33281 and 34172/2007 have a case that they are entitled to have their services approved from the date of their respective appointments and that they should get monitory and other benefits on that basis. However, Ext. P-12 shows that the government approval is effective from 5-3-2007.

29. Ext. P-12 has been issued on the basis that approval of the State Government was necessary in view of University Laws (Amendment) Act, 2005, which came into force with effect from 6-1-2005, by which Section 59(1) of Mahatma Gandhi University Act was inserted. As per the amended provision, appointments of posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officer as may be authorized by the Government. The effect of the corresponding provision contained in the Kerala University Act, was considered by a Division Bench of this Court in Shalini Rachel v. Manager, Christian College 2007 (3) KLT 355, when it was held as follows:

10. Scope of Section 57(2) of the Kerala University Act has to be tested in the light of the above-mentioned statutory provisions. Power of the University in granting approval as well as sanctioning posts after ascertaining the work load and fixation of staff pattern as per the Statutes has not been taken away by the University Amendment Act 2 of 2005. Clear cut provisions have been made in the University Statutes and Ordinances as to how the work load has to be assessed and staff strength fixed so as to avoid unnecessary appointments. Further the interest of the students is also to be safeguarded by appointing sufficient number of teachers without delay. Power is also conferred on the Deputy Director of Collegiate Education to take up the matter with the University in case there is any doubt with the approval granted. In appropriate cases, Government can also examine the action taken by the Deputy Director and address the University through him.

11. We have no reason to think that an august body like Syndicate or the Deputy Director of Collegiate Education would act arbitrarily or against public interest while exercising powers statutorily conferred on them. Sub-section (1) of Section 57 only says that appointments to the posts eligible to receive salary from the

Government shall be made only after getting prior sanction from such officers authorised by the Government. For filling up the posts sanctioned by the University on the basis of work load or staff pattern, no prior permission of the Government is necessary. Once Syndicate of the University grants approval for filling up the existing vacancies depending upon the work load and staff pattern Government is obliged to pay salary of the teachers appointed by duly constituted Selection Committee. If Government or its officers find that the approval was granted by the University illegally it can always take up the matter before the University or other forums so that public interest will not suffer. Section 57(1) was introduced not to take away the statutory powers already conferred on the Syndicate of the University. Principle laid down in Cherian Mathew's case, supra in our view, still holds good. In view of the above-mentioned circumstances, we are inclined to affirm the judgment of the learned Single Judge in W.P.(C) No. 12109 of 2006 and dismiss W.A. No. 940 of 2007.

12. We allow all the Writ Petitions and declare that it is obligatory on the part of the Government to release salary due to the teachers whose appointments are approved by the University. Government have however no obligation to disburse salary, if appointments are made by the aided colleges, to a non existent posts, when a new subject is sought to be introduced, or, division is sought to be started, for which Government sanction is a pre-condition as provided u/s 57(1) of the University Act. Universities are also not expected to grant their approval in such a situation. For existing posts on grant of approval from the University on the basis of work load and staff fixation, Government and the officers authorised by, the Government, have to honour the Direct Payment agreement and release the salary due to the teachers. In view of the declaration, of law made by us, Universities would process the request for approval of appointment and orders be issued accordingly without delay and on that basis, the Deputy Director of Collegiate Education would release the salary of the teachers.

30. In these cases, it is the undisputed position that vacancies notified were as per the staff pattern fixed by the University and in fact the State Government themselves have by Ext. P-7 "permitted to fill up the existing vacancies of Lecturers in sanctioned posts" in compliance with the judgment in W.P.(C) No. 22237 of 2004. Therefore, the vacancies being as per staff pattern fixed by the University, posts being sanctioned posts and appointments having been made to existing vacancies, there was absolutely no requirement of Government approval as stated in Ext. P-12. This legal position stands concluded by the Division Bench judgment referred to above. If the legal position is as above, the fact that the Government granted approval w.e.f. 5-3-2007, as per Ext. P-12 is inconsequential and the Petitioners cannot be deprived of their legal entitlements following from their appointments.

31. It was pointed out that Ext. P-12 has not been challenged. In view of the patent illegality that Ext. P-12 suffers from, it is inconsequential that it is not challenged. In the context of statutory regulations, the Apex Court has in

Bharathidasan University v. AICTE 2001 (8) S.C.C. 676 held that:

Consequently, when the power to make regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a Respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack.

32. If this be the law governing statutory regulations, Ext. P-12, an executive order, cannot stand on a better footing. Therefore, relying on Ext. P-12, the Petitioners in W.P.(C) No. 33281 and 33462 of 2007 cannot be deprived of their entitlements from the commencement of their services.

33. For these reasons Ext. P-16 in W.P.(C) No. 33462 of 2007 and Ext. P-9 in W.P.(C) Nos. 33281 and 34172 of 2007 are quashed and the Syndicate of the Respondent University is directed to grant approval to the appointment of the Petitioners in W.P.(C) No. 33462 and 33281 of 2007 as lecturers in terms of Statute 16 of Chapter 45B of the M.G. University First Statutes. It is directed that the Respondents shall disburse pay and allowances to the Petitioners in W.P.(C) Nos. 33462 and 33281 of 2007, with full service benefits flowing therefrom, as expeditiously as possible, at any rate, within 8 weeks from the date of receipt of a copy of this judgment. Writ petitions are disposed of as above.