

W.P.(C) No. 23598/2021 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 16TH DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944

WP(C) NO. 23598 OF 2021

PETITIONER/S:

- 1 ARUN P WILSON,
AGED 22 YEARS
S/O. WILSON, 2ND SEMESTER STUDENT, 3 YEAR LL.B COURSE,
GOVERNMENT LAW COLLEGE, THRISSUR, RESIDING AT PALATTY
HOUSE, THABORE P.O., ANGAMALY-683 577.
- 2 MATHEWS V. CHERIAN,
AGED 23 YEARS
2ND SEMESTER STUDENT, 3 YEAR LL.B COURSE, GOVERNMENT
LAW COLLEGE, THRISSUR, RESIDING AT KURRISINKAL HOUSE,
KOCHU KADAVANTHRA, KOCHI-682 020.
- 3 MEBIN PETER,
AGED 24 YEARS
S/O. PETER K.P., 2ND SEMESTER B.B.A, LL.B (HONS) (5 YEAR),
GOVERNMENT LAW COLLEGE, CALICUT, KAVUNGODI HOUSE,
KOLAYAD P.O., KANNUR DISTRICT-670 650.
- 4 PRASANTH S. KUMAR,
AGED 25 YEARS
2ND SEMESTER STUDENT, UNITARY LL.B 3 YEAR, GOVERNMENT
LAW COLLEGE, ERNAKULAM, 5220 KV. SUB STATION, KSEB
QUARTERS, KALITHATTU JUNCTION, PUNNAPRA P.O., ALAPPUZHA-
688 004.
BY ADVS.
SANTHOSH MATHEW
JENNIS STEPHEN
VEENA RAVEENDRAN
KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL
ABI BENNY AREECKAL
LEAH RACHEL NINAN
MATHEW NEVIN THOMAS

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN-695 001.
- 2 THE PRINCIPAL SECRETARY,

- HIGHER EDUCATION DEPARTMENT, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN-695 001.
- 3 BAR COUNCIL OF INDIA,
21, ROUSE AVENUE INSTITUTIONAL AREA, NEAR BAL BHAWAN,
NEW DELHI-11002, REPRESENTED BY ITS SECRETARY.
- 4 BAR COUNCIL OF KERALA,
BAR COUNCIL BHAWAN, HIGH COURT ROAD, ERNAKULAM, KOCHI-
682 031, REPRESENTED BY ITS SECRETARY.
- 5 THE PRINCIPAL,
GOVERNMENT LAW COLLEGE, ERNAKULAM, MARINE DRIVE, KOCHI-
682 011.
- 6 THE PRINCIPAL,
GOVERNMENT LAW COLLEGE, THIRUVANANTHAPURAM, BARTON
HILL ROAD, BARTON HILL COLONY, KUNNUKUZHY,
THIRUVANANTHAPURAM-695 037.
- 7 THE PRINCIPAL,
GOVERNMENT LAW COLLEGE, THRISSUR, LAW COLLEGE ROAD,
AYYANTHOLE, THRISSUR-680 003.
- 8 THE PRINCIPAL,
GOVERNMENT LAW COLLEGE, KOZHIKODE, VALLIMADUKUNNU,
KOZHIKODE-673 012.
- 9 ADDL.R9 & R10 IMPEADED:

KERALA PUBLIC SERVICE COMMISSION
THULASI HILLS, PATTOM PALACE, THIRUVANANTHAPURAM,
KERALA - 695 004, REPRESENTED BY ITS SECRETARY.

- [ADDITIONAL R9 IS IMPEADED AS PER ORDER DATED
10.11.2021 IN I.A.1/2021 IN WP(C)23598/2021.]
- 10 THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA PIN-695 001

[ADDL. R10 IS IMPEADED AS PER ORDER DATED 20.12.2022 IN
WP(C) 23598/2022]

BY ADVS.
GOVERNMENT PLEADER
ADVOCATE GENERAL OFFICE KERALA
R3 BY SRI. RAJIT, SC
R4 BY SRI. PRANOY K.KOTTARAM, SC

R1, R2, R5 & R10 BY SMT RESHMI.K.M., SR. GOVERNMENT
PLEADER
R9 BY SRI. P.C. SASIDHARAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16.02.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHAJI P. CHALY, J.

W.P.(C). No. 23598 of 2021

Dated this the 16th day of February, 2023.

JUDGMENT

The petitioners, students undergoing LLB course in the three Government Law Colleges within the State of Kerala, have filed this writ petition seeking a direction to the respondents not to permit commencement of LLB course in Government Law Colleges within the State of Kerala without having sufficient permanent faculties as per the Bar Council of India Rules of Legal Education, 2008 and Exhibit P2 guidelines/resolution; and for a further direction to respondents to fill up immediately the vacancies of permanent faculties in Government Law Colleges in the State of Kerala to comply with the Rules.

2. The case projected by the petitioner is that as per Section 49(1)(af)(ag) and (d) of the Advocates Act, 1961 ('Act, 1961' for short), the degree of law awarded by the colleges has to be recognised by the Bar Council of Kerala. The Bar Council of India framed the Rules of Legal Education, 2008 and the same came into force on 14.09.2018, which replaced all the previous rules, directives, notifications and resolutions relating to matters covered under the said Rules.

3. According to the petitioners, the Rules so framed laid down the maintenance of standards of legal education and the inspection of Universities for recognizing professional degrees in law obtained from recognised Universities under Sections 7(1)(h) and (I), 24(1)(c)(iii) and (iiia), 49(1)(af)(ag) and (d) of the Act, 1961, framed by the Bar Council of India in consultation with the Universities and State Bar Councils.

4. It is submitted that after the enactment of the Rules of Legal Education, 2008, all the Law Colleges and Universities in India are bound to follow the directives contained in the Rules in respect of the curriculum, as is evident from Exhibit P1 Rules of Legal Education, 2008. It is also pointed out that Schedule III of the Rules, 2008 deals with minimum infrastructural facilities required in a Centre of Legal Education for applying for permission to run law courses with affiliation from an Indian University.

5. Clause 17 of Schedule III of Rules, 2008 deals with core faculty and it reads thus:

“17. **Core Faculty:** There shall be sufficient number of full time faculty members in each Centre of Legal Education (i.e. ,Department, constituent or affiliated college) to teach each subject at all point of time for running courses who can be supported by part time or visiting faculty. Such a core faculty shall in no case be less than six in the first year of the approval with both streams in operation, eight in the second

year and ten in the case of third year of law courses. In addition, for the integrated course there shall be adequate faculty in the subjects offered in the liberal educational subjects as part of the course by the institution. These faculties in the liberal educational discipline in Arts, Science, Management, Commerce, Engineering, Technology or any other discipline shall possess qualification as is required under the UGC guideline or under such other standard setting body as the discipline is allotted to by any Act, statute, or Rules of the Government of India or of a State.

..."

6. That apart, for the Three Year Bachelor of Law degree course with two sections without the Honour program, there shall be a minimum of 4 core faculty in the first year, six in the second and eight in the third year, in addition to the Principal/Head or Dean, as the case may be. Various other mandatory requirements are contained in the Rules with respect to the teaching faculties.

7. The sum and substance of the contention advanced by the petitioners is that as per the Rules, the University shall ensure that the core faculty members for each course should at least be 1:40 ratio, so that the students do not suffer because of shortage of faculty members. The paramount contention advanced by the petitioners is that in most cases, in Government Aided Institutions it is found that the State Government has not sanctioned the minimum requirements of faculty members for various reasons. However, there can be no exception to be made in the cases of

Government Aided Institutions. It is also pointed out that in case of shortage of faculty members, the Bar Council of India has power to stop admission of the students and the University must also see that affiliation should only to be granted by it, when the faculty members conformed to the Rules as aforesaid. It is further submitted that the University Grants Commission lays down the general rule, but cannot supersede the specific statutory rule laid down by the Bar Council of India under the Act, 1961.

8. In the above background, it is submitted that from 2014 to 2018, the students faced severe issues for grant of affiliation of their course by the Bar Council of India. In fact, on 28.09.2019, the Bar Council of India issued Ext. P3 Interim Consent letter to the Registrar of the Mahatma Gandhi University and the Principal, Government Law College, Ernakulam for extension of approval of affiliation to Government Law College, Ernakulam for imparting Three Year LLB Course, with an intake of two sections of 60 students in each Section and Five Year LLB course with an intake of two sections of 60 students in each section for the academic year 2019-2020.

9. The Bar Council of India, in the said letter, had strictly directed the University and the College to reduce the intake of Three Year students to a Section from 100 to 60 and for five years

from 80 to 60. Therefore, it is submitted that as per 1:40 ratio, the Government Law College, Ernakulam should have 18 faculty members; however, it had only 17 faculty members. Other statistics and figures are given to show that there is no sufficient strength of the faculty in order to satisfy the requirements of the Rules of Legal Education, 2008 and the Act, 1961. It is in the above background that the directions are sought for by the petitioners.

10. Separate statements are filed by the Government officials showing the strength of the faculty, the workload etc. But, fact remains, there is no creation of posts in order to comply with the Rules of Legal Education, 2008 and the provisions of the Act, 1961. It is submitted that during the year 2021-2022, sufficient posts were not created and during the academic year 2022-2023, contract appointments were made, which is against the directions issued by the Bar Council of India which clearly specified that there should be creation of posts and permanent appointments to be made.

11. Anyhow, in an earlier counter affidavit dated 02.04.2022, after explaining the steps taken by the State Government, it is stated that the consolidated proposals from the Government Law Colleges have been forwarded to the Finance Department of the Government on 24.02.2022 for sanction of posts; and since the

creation of posts involves serious financial commitments, the proposals made by the Higher Education Department is deferred by the Finance Department at the moment and the same is forwarded to the concerned Minister for final decision. The said statement is contained in the counter affidavit of the Secretary to Higher Education Department, and it is clear that even though steps were taken by the Higher Education Department and forwarded for the concurrence of the Finance Department, the Finance Department has not granted approval to create posts and make permanent appointments.

12. I have heard the learned counsel for the petitioners Sri. Santhosh Mathew, learned Senior Government Pleader Smt. Reshmi K.M, Sri. Pranoy K. Kottaram, learned Standing Counsel for the Bar Council of India, Sri. Rejit for the Bar Council of Kerala and Sri. P.C. Sasidharan for the Kerala Public Service Commission, and perused the pleadings and materials on record.

13. The detailed deliberation of facts made above would make it clear that the State Government has not taken adequate steps to satisfy the requirements of the Act, 1961 and the Rules, 2008 with respect to the appointment of required faculty. As I have pointed out above, even though steps were taken by the Higher Education Department to make necessary appointments, the Finance

Department has not so far given concurrence and the matter is still pending before the Minister for final decision.

14. Since the mandate of the Bar Council of India is liable to be implemented by the State Government and the respective Universities, the State Government is duty bound to take adequate steps immediately so as to create posts and make permanent appointments in the Government Law Colleges within the State, failing which the students are likely to suffer, especially taking into account Exhibit P3 letter issued by the Bar Council of India expressing concern over the attitude of the Government and the University to take adequate steps to maintain the faculty strength.

15. In that view of the matter and since the matter is pending before the Department of Finance for scrutiny, it is only appropriate that the writ petition is disposed of with a direction to the Government to take a decision within a time frame, create posts and then to make permanent appointments. This should happen at least from the academic year 2023-2024.

16. Accordingly, there will be a direction to the State Government to take appropriate decision to satisfy the requirements of faculty strength prescribed by the Bar Council of India under the Rules, 2008 and the Act, 1961, at the earliest, at any rate within four months from the date of receipt of a copy of

W.P.(C) No. 23598/2021 : 10 :

this judgment; and also to take immediate steps thereafter to create posts and make permanent appointments so as to satisfy the requirements of the faculty strength for the academic year 2023-2024 onwards.

sd/- **SHAJI P. CHALY, JUDGE.**

Rv

APPENDIX OF WP(C) 23598/2021

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE RULES OF LEGAL EDUCATION 2008.
- Exhibit P2 TRUE COPY OF THE DIRECTIVES/RESOLUTION DATED 03/02/2014 ISSUED BY THE BAR COUNCIL OF INDIA REGARDING IMPLEMENTATION OF RULES OF LEGAL EDUCATION, 2008.
- Exhibit P3 TRUE COPY OF THE INTERIM CONSENT LETTER DATED 28/09/2019 ISSUED BY THE BAR COUNCIL OF INDIA TO THE REGISTRAR OF MAHATMA GANDHI UNIVERSITY AND THE PRINCIPAL, GOVERNMENT LAW COLLEGE ERNAKULAM.
- Exhibit P4 TRUE COPY OF THE CIRCULAR NO. 158/2020 DATED 05/02/2020 ISSUED BY THE BAR COUNCIL OF INDIA.
- Exhibit P5 TRUE COPY OF THE PRESS RELEASE DATED 16/06/2021 ISSUED BY THE BAR COUNCIL OF INDIA.
- Exhibit P6 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO. GO(MS) NO. 303/2020 DATED 26/08/2020.
- Exhibit P7 TRUE COPY OF THE COMMUNICATION DATED 13/11/2020 ISSUED BY THE PRINCIPAL, GOVERNMENT LAW COLLEGE, THIRUVANANTHAPURAM TO THE PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT.
- Exhibit P8 TRUE COPY OF THE REQUEST DATED 11/11/2020 SENT BY THE PRINCIPAL OF GOVERNMENT LAW COLLEGE, THRISSUR TO THE PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT.
- Exhibit P9 TRUE COPY OF THE COMMUNICATION DATED 07/12/2020 ISSUED BY PRINCIPAL, GOVERNMENT LAW COLLEGE, KOZHIKODE TO THE PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT ALONG WITH ENGLISH TRANSLATION.
- Exhibit P10 TRUE COPY OF THE COMMUNICATION DATED 02/11/2020 ISSUED BY THE PRINCIPAL OF GOVERNMENT LAW COLLEGE, ERNAKULAM TO THE PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT.
- Exhibit P11 TRUE COPY OF THE NOTE TO THE CABINET DATED 10/02/2021 SHOWING THAT THE CABINET CONSIDERED THE ISSUE OF COMPLIANCE WITH EXHIBIT P1 RULES ALONG WITH ENGLISH TRANSLATION.
- Exhibit P12 TRUE COPY OF THE MINUTES OF THE CABINET MEETING DATED 10/02/2021 ALONG WITH ENGLISH TRANSLATION.
- Exhibit P13 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO.

- GO(MS) NO.90/2021/HED DATED 13/02/2021 ALONG WITH ENGLISH TRANSLATION.
- Exhibit P14 TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE HIGHER EDUCATION DEPARTMENT DATED 02/07/2021 ALONG WITH ENGLISH TRANSLATION.
- Exhibit P15 TRUE COPY OF THE COMMUNICATION DATED 25/09/2021 ISSUED BY THE PRINCIPAL OF GOVERNMENT LAW COLLEGE, ERNAKULAM TO THE PRINCIPAL SECRETARY, HIGHER EDUCATIONAL DEPARTMENT ALONG WITH ENGLISH TRANSLATION.
- Exhibit P16 TRUE COPY OF THE REPRESENTATION DATED 23/10/2021 FILED BY THE PETITIONERS BEFORE THE BAR COUNCIL OF INDIA AND THE BAR COUNCIL OF KERALA WITHOUT ANNEXURES.
- Exhibit P17 TRUE COPY OF THE EMAIL DATED 25/10/2021 ISSUED TO BAR COUNCIL OF INDIA AND PRINCIPAL SECRETARY, HIGHER EDUCATION.
- Exhibit P18 TRUE COPY OF THE RANKED LIST NUMBER 871/2018/OLE OBTAINS FROM THE WEBSITE OF THE KERALA PUBLIC SERVICE COMMISSION.
- EXHIBIT P19 TRUE COPY OF THE ADVERTISEMENT PUBLISHED IN MATHRUBHUMI DAILY DATED 10.11.2021 INVITING APPLICATION FOR TWO GUEST LECTURERS IN GOVERNMENT LAW COLLEGE, ERNAKULAM.
- Exhibit P20 TRUE COPY OF THE ORDER DATED 12/11/2021 IN O.A. (EKM) 1794/2021 OF THE KERALA ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- Exhibit P21 TRUE COPY OF THE ORDER DATED 19/11/2021 IN O.A.NO.2161/2021 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM BENCH.

RESPONDENTS' ANNEXURES:

ANNEXURE R7(a): TRUE COPY OF THE STATEMENT OF THE FACULTY REQUIREMENT WAS SUBMITTED TO THE GOVERNMENT ON THE BASIS OF THE WORKLOAD OF THE PREVIOUS YEARS.

ANNEXURE R5(a) : TRUE COPY OF THE DETAILED CALCULATION OF WORKLOAD.

True Copy

PS To Judge.