

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1072 OF 2022

(Arising out of SLP(Civil) No(s). 6392 of 2021)

DR. JAGATHY RAJ V.P.

....APPELLANT(S)

VERSUS

DR. RAJITHA KUMAR S. & ORS.

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal has been preferred assailing the judgment dated 8th April 2021 passed by the Division Bench of the High Court of Kerala at Ernakulam setting aside the judgment of the learned Single Judge dated 1st March, 2021 and directing the Cochin University of Science and Technology to nominate respondent no. 1 as Head of the Department (in short "HOD")/Director of School of Management Studies of Cochin University.

3. The relevant facts in brief culled out from the record are that both the appellant and respondent no. 1 are members of the teaching faculty and the appellant is senior to respondent no. 1 as the appellant became Professor in April 2009, whereas respondent no. 1 on 1st October, 2013. Even otherwise, the seniority of the appellant qua respondent no. 1 is not in dispute.

4. In terms of Section 39(1) of the University Act, the Government of Kerala framed its Statute. That Statute 18 envisages the appointment of a Director/HOD. For appointment of the Director/HOD, the Syndicate shall nominate a teacher not below the rank of an Associate Professor with Ph.D or an equivalent post, as prescribed by UGC Regulations or Regulations based on seniority on a rotational basis for a period of three years. One Dr. Moli P. Koshy, the senior Professor in the School of Management was nominated by order dated 15th July, 2015 as HOD/Director of the School of Management Studies. He was relieved from the post of Director on attaining the age of superannuation with effect from 6th December, 2017. The appellant, who was the next senior most Professor in queue, was eligible to be nominated by rotation as

HOD. However, vide communication dated 18th July 2017, the appellant expressed his unwillingness because of his pre-occupation in teaching and research. Taking into consideration the unwillingness expressed by the appellant at the given point of time, the next eligible Professor Dr. Mavoothu D. was nominated as Director/HOD by an Order dated 23rd November 2017 for a period of three years with effect from 7th December, 2017.

5. Before the term of Dr. Mavoothu D. of three years was going to expire, the appellant showed his willingness at that stage to consider him for appointment as Director/HOD and communicated the same to the Registrar of the University vide letter dated 26th June, 2020. At the same time, respondent no. 1 who was next to the appellant in seniority equally protested the claim of the appellant by a letter dated 3rd November, 2020.

6. The Syndicate of the University in its meeting held on 20th November, 2020, after taking note of Statute 18 (Agenda Item No. 681.18) observed that the relinquishment made by the appellant was specific to the nomination after the term of Dr. Moly P. Koshy and that was the reason Dr. Mavoothu D. was nominated for the

post of HOD/Director. Taking note of Statute 18, the rotation begins according to seniority and not at the point at which earlier nomination was made. Hence, it is the appellant who has to be considered first and also noticed the number of precedents in the University where seniority was given preference and senior professors were nominated as HOD after they relinquished their actual chance. The reason behind is that the University gives paramount importance to academic and research work and doesn't want to disrupt the academic and research work of a senior Professor when his turn arises but intend to nominate the teacher after those activities are over, and accordingly recommended the name of the appellant to be appointed as HOD.

7. Pursuant to the recommendations made by the Syndicate in its meeting held on 20th November, 2020, the appellant was nominated as HOD for a period of three years by Order dated 27th November, 2020 and that became the subject matter of challenge by filing of a writ petition under Article 226 of the Constitution before the learned Single Judge of the High Court at the instance of respondent no. 1.

8. It reveals from the record that by an interim order dated 18th December, 2020 of the High Court, the University was directed to revisit their rival claims that were placed before the Syndicate in its meeting held on 21st December, 2020 (Agenda item no.682.20) and the earlier recommendation was strongly reiterated.

9. The learned Single Judge thereafter taking note of the submissions and Statute 18 in particular, repelled the contentions advanced by respondent no.1 under order dated 1st March, 2021 and observed that the senior most person has to be considered for appointment as HOD/Director of the Department on rotational basis for a period of three years and the appellant who was admittedly senior has relinquished his claim on rotation of three years in the year 2017 and his unwillingness was for the period when the name of the appellant came for consideration in 2017 and in his place Dr. Mavoothu D. was appointed. But the time when a fresh consideration has taken place, the appellant could not be denied his right of fair consideration as the relinquishment cannot be for an infinite period and further observed that no error was

committed by the Syndicate in nominating the appellant for the post of Director/HOD.

10. The judgment of the learned Single Judge dated 1st March 2021 was challenged in writ appeal at the instance of respondent no. 1 and the Division Bench of the High Court under the impugned judgment overturned the finding returned by the learned Single Judge on the premise that Statute 18 conspicuously takes note of seniority on a rotational basis for a period of three years and once the relinquishment was made by the appellant in terms of the Statute 18, the appellant has foregone his right of consideration for all times to come and respondent no. 1, who was the next in queue, was to be considered for nomination as the HOD/Director of School of Management Studies of Cochin University, taking note of the admitted seniority and rotational turn, which is a subject matter of challenge in appeal before us.

11. Mr. P.S. Patwalia, learned senior counsel for the appellant, submits that the nominations were made in terms of Statute 18 by the Syndicate according to seniority on rotational basis for a period of three years and seniority has always to be given its due

precedence and the teacher who is qualified and senior in the teaching faculty is to be considered for nomination as HOD, but if for any personal reasons, or for academic teaching and research work which is undertaken by him/her for relinquishment, foregoes claim at the given point of time, that cannot be considered to be the relinquishment of right in perpetuity, the way it has been interpreted by the Division Bench in the impugned judgment.

12. Learned counsel further submits that there are precedents where the University has considered the claim based on seniority of such of the teachers who had once relinquished their claim but because of their seniority, due weightage was attached to them and they were considered for nomination as HOD in the second rotation. To be more specific, two incidents have been referred to of Dr. M.K. Jayaraj and Mrs. Mariamma Chacko, who had first expressed unwillingness to take over as HOD but later on, both were nominated as HOD in the second rotational term. In the given circumstances, no error has been committed by the Syndicate in nominating the appellant as HOD by Order dated 27th November. 2020.

13. Learned counsel further submits that under Statute 18, there is no express bar that teacher who has once shown his unwillingness for being considered for appointment/nomination as HOD, would be eliminated in perpetuity and, in the given circumstances, constructive interpretation which has been made by the Syndicate of Statute 18 in giving due weightage to seniority keeping in view paramount importance to academic and research work and not to disrupt the academic and research work of a senior Professor when his/her turn arises and if the unwillingness is once shown at the given point of time, that will not take away the right of fair consideration in the next rotation and still if two interpretations of Statute 18 are possible and University has interpreted Statute 18 in a way which sub-serve the purpose and has been followed in the past, of which a reference has been made, there appears no reason to deviate from the practice followed by the University for a number of years and placed reliance on the judgment of this Court in **N. Suresh Nathan and Another Vs. Union of India and Others** 1992 Supp.(1) SCC 584.

14. Per contra, Ms. Bina Madhavan, learned counsel for respondent no. 1, submits that once the right has been relinquished by the appellant in the year 2017 and teacher in queue, Dr. Mavoothu D. was nominated as Director/HOD on rotational basis for a period of three years, the appellant loses right of consideration for becoming HOD for all times to come and the next in queue is to be considered to avail the opportunity to become HOD and this is what the Division Bench has observed under the impugned judgment and is being envisaged by Statute 18 and needs no further indulgence of this Court.

15. Learned counsel further submits that if the appellant would have joined in the year 2017 when he was indisputedly eligible for becoming the HOD, the next incumbent to whom the charge was handed over for becoming the HOD Dr. Mavoothu D., by this time, would have retired and respondent no. 1 would have been considered eligible for nomination as HOD in the year 2020. But because the appellant relinquished his claim at the given point of time in 2017, it is respondent no. 1 whose right of fair consideration has been jeopardized and since the retirement of the present

appellant and respondent no. 1 are at the same point of time, she is deprived from being considered for appointment as HOD for all times to come and because of the unwillingness of the appellant at one stage, no one has suffered a loss except respondent no. 1.

16. Learned counsel for the University has supported the submissions made by the appellant and submits that Statute 18 has been considered in the right perspective keeping in view the paramount importance to academic and research and the teachers who are undergoing the academic and research work, the intention is not to disrupt the same. At the same time, right of fair consideration based on seniority in the next rotation whenever comes during his/her term cannot be ignored and that being the object of Statute 18 has been considered by the University and precedents referred by the appellant have been consistently followed and no deviation has ever been made. Statute 18 mandates for the appointment to the post of Director as per seniority and the senior most Professor has to be appointed for a period of three years and claim of the appellant was considered after taking note of his seniority and all other factors into consideration while nominating

him as Director/HOD and further submits that the interference made by the Division Bench in setting aside the recommendations made by the University is not sustainable in law and deserves to be interfered with by this Court.

17. We have heard learned counsel for the parties and with their assistance perused the material available on record.

18. So far as the seniority of the appellant qua respondent no. 1 is concerned, it is not in dispute. In the year 2017, the appellant was a senior most Professor but because of undergoing research work at that time, he had shown his unwillingness to become the Director/HOD, by communication dated 18th July 2017 and taking note of his unwillingness, the Professor in queue, Dr. Mavoothu D. was nominated as Director/HOD with effect from 7th December, 2017 for a period of three years. Before the term of Dr. Mavoothu D. was going to complete, the appellant has shown his willingness at that time for being considered for appointment as a Director of School of Management Studies by his communication dated 26th June, 2020.

19. Statute 18 which is relevant for the purpose is reproduced as under:-

"18. Head of the Department- The Syndicate shall nominate a teacher not below the rank of an Associate Professor with Ph.D or an equivalent post as prescribed by the UGC regulations or regulations of any Apex Authority specified for the purpose as Head of the Department according to seniority on a rotational basis for a period of 3 years. It shall, however, be open to the teacher who has been nominated as the Head of the Department to make a request that he/ she shall be relieved of such a responsibility for academic reason. In such a case the next eligible teacher will be nominated as the Head of the Department. All the members of the teaching staff shall work under the directions of the Head of the Department. In the case of Departments which have no Professor or Associate Professor or equivalent post prescribed by the UGC Regulations or regulations issued by any other competent authority, the Syndicate shall nominate an Assistant Professor or equivalent post prescribed by the UGC Regulations or by the regulations issued by any other competent authority specified for the purpose according to seniority on a rotational basis as Head of the Department in charge till another Professor assumes charge or an Associate Professor is promoted under Career Advancement Scheme of UGC/AICTE and the other teachers shall work under the directions of the Head of the Department."

20. The Syndicate of the University in its review meeting held on 21st December, 2020 pursuant to interim order of the High Court dated 12th December, 2020 in Agenda Item 682.20 took the following decision:-

“It is true that Dr.Jagathy Raj V.P. was next in line to be considered for the post of Director, School of Management Studies after the tenure of Prof(Dr.) Moly P. Koshy. However, Dr.Jagathy Raj, before the actual nomination was made as per letter dtd. 18. 7.2017 informed the University as follows:

"It is learnt that I am next in line to be nominated as the Director, School of Management Studies after the tenure of present Director, Prof (Dr.) Moly P. Koshy. Since I am interested in Teaching and Research only, I request you not to consider me for the Directorship of School of Management Studies".

Thus the relinquishment made by Dr.Jagathy Raj V.P. was specific to the nomination after the term of Dr. Moly P. Koshy. Hence Dr.Mavoothu D was nominated for the post of Director. Before the term of Dr.Mavoothu expired both Dr.Rajitha Kumar S as well as Dr.Jagathy Raj V.P. expressed willingness to be nominated to the post of Director, SMS. While Dr.Jagathy Raj V.P. was senior to Dr.Mavoothu, Dr.Rajitha Kumar is junior to both of them. Going by the provisions of Statute 18, the rotation begins according to seniority and not at the point at which earlier nomination was made. Hence it is Dr.Jagathy Raj who has to be considered first. Thus the claim of Dr.Rajitha Kumar that all eligible candidates below the present incumbent has to be exhausted before considering the senior doesn't merit any consideration. There have been a number of precedents in the University where seniority was given preference and senior professors were nominated as the Head of the Department after they relinquished their actual chance. This is because the University gives paramount importance to academic and research work and doesn't want to disrupt the academic and research work of a senior Professor when his turn arises but want to nominate him after those activities are over, that such a provision has been introduced.

Moreover, any nomination to be made is the discretion of the nominating authority and therefore there is nothing wrong in nominating any senior as the Head of the Department. Also the rights of Dr.Rajitha Kumar are not affected as he can function as the Head of the Department after the tenure of Dr.Jagathy Raj.

Notwithstanding the letter dtd. 18.7.2017 of Dr.Jagathy Raj, the Syndicate can nominate him though it may not be perhaps open to Dr.Jagathy Raj to enforce a claim for nomination as Head of the Department against the University.

Considering all the aspects and reconsidering the matter as directed by the Honourable High Court, the Syndicate unanimously resolved to nominate Dr.Jagathy Raj as Director, School of Management Studies."

21. It is not in dispute that earlier on two different occasions, the Professors who had shown their unwillingness at one point of time were considered by the University when the second rotational term became due because of his/her seniority and eligibility to be nominated for the post of Director/HOD and this fact has been admitted by the University in its counter affidavit filed before the High Court, the extract of which is reproduced hereunder:-

6. The appellant herein in the writ petition has claimed that the present appointment of Dr. Jagathy Raj is against all the rules and practices in the University, as nobody can reclaim a position which he himself has declined earlier is wrong and contrary to the present practice and precedents in the University. There are many precedents in the university which points out that the persons who had declined the post of Directorship for a particular tenure were later nominated to the post when the next tenure arose. One Mr. Dr. M.K Jayaraj had expressed his inability to take over as the head of the Department of Physics in the year 2016, consequently Dr. M. Junaid Bushiri was nominated in his place and later when the tenure of Dr. Junaid Bushiri was expiring on 31.10.2019, Dr. MK Jayaraj had expressed his willingness to be nominated as Head of the Physics Department 02.11.2019. True copies of the order nominating Dr. Junaid Bushiri and Dr. MK Jayaraj dated 01.11.2016 and 31.10.2019 respectively. True copies of the order dated 01.11.2016 and 31.10.2019 are produced herewith and marked as Annexure R3(c).

7. One Mrs. Mariamma Chacko had expressed her unwillingness to take over as the head of the Department of Ship Technology in the year 2016, consequently Dr. C.G Nandakumar was nominated in his place and later when the tenure of Dr.C.G Nandakumar came to an end by the virtue of voluntary retirement on 30.04.2017, Dr. Mariamma Chacko, next senior most eligible teacher for headship expressed her willingness to take up the headship and thereby she was nominated for a period of three years vide order dated 31.03.2017. True copies of the order nominating Dr. C.G

Nandakumar and Dr. Mariamma Chacko dated 10.02.2016 and 31.03.2017 respectively are produced herewith and marked as Annexure R3(d).

22. Statute 18 of the University authorizes the Syndicate to nominate the teacher not below the rank of an Associate Professor with Ph.D or an equivalent post as prescribed by the UGC regulations for the purpose, as HOD according to seniority on a rotational basis for a period of three years. However, it would be open for the teacher who has been nominated as HOD to make a request that he/she shall be relieved of such a responsibility for academic reasons. What is being envisaged from Statute 18 is that teachers who are eligible according to seniority are being considered for HOD on a rotational basis for a period of three years, if shows unwillingness or makes a request to be relieved from such a responsibility for academic reason, can certainly be relieved for that rotation but there is no prohibition which deprives the teacher from being considered for appointment as HOD when the second rotational term becomes due. That being the reason, the University in two earlier precedents considered such teachers again who, at the first instance, had shown their unwillingness to join and later

became HOD, keeping in view the paramount consideration not to disrupt the academic and research work of a senior Professor when his turn arises and if he has shown unwillingness, his seniority has to be given its pre-dominance and opportunity is available to him to serve when the next rotation becomes due and that is the reason the appellant was also considered and recommended by the Syndicate to be nominated as HOD/Director School of Management Studies keeping in view the mandate of the Statute.

23. Although there is no prohibition under Statute 18, still if two views are possible and the University has interpreted in the way which serves the purpose keeping in view the paramount consideration to the academic and research work and the seniority of the teachers while considering for appointment as HOD/Director, School of Management Studies which was judicially examined and upheld by learned Single Judge of the High Court.

24. This Court in ***N. Suresh Nathan and Another(supra)*** has held that past practice which is being followed for long time if not contrary to law, be given its true precedence and ordinarily not to be interfered by the Courts in exercise of power of judicial review

under Article 226 of the Constitution of India. The extract of para 4 is reproduced as under:-

“..... The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.”

25. In our considered view, the interference made by the Division Bench of the High Court in interpreting Statute 18 of the University is not sustainable in law and deserves to be set aside.

26. Consequently, the appeal is allowed. The judgment of the Division Bench of the High Court impugned dated 8th April, 2021 is quashed and set aside. No order as to costs.

27. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
FEBRUARY 07, 2022