IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

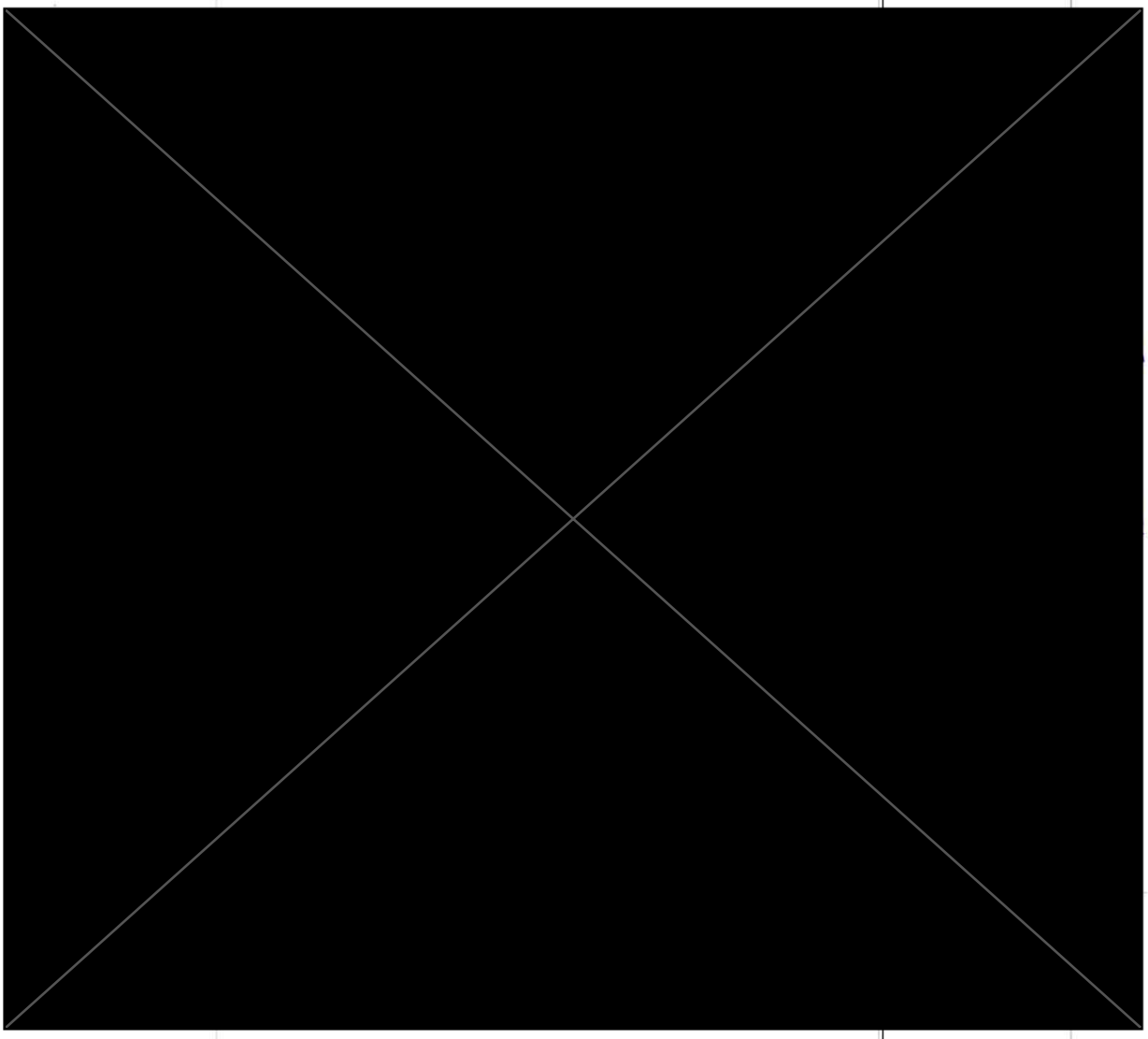
S.L.P. (CIVIL) No. 15816 OF 2023

In the matter of :

University Grants Commission .....Petitioner

Versus

Priya Varghese & Ors. .....Respondents



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REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONER TO THE COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT NO. 1

[redacted]

110002, do hereby solemnly affirm and declare as under : -

1. That I am working as [redacted] in the University Grants Commission [hereinafter referred to as "the UGC"] herein and as such, I am conversant with the facts and circumstances of the instant case and hence, am competent to swear the instant affidavit.

[redacted]

2. That at the outset, it is respectfully submitted that the contents of the counter affidavit filed on behalf of the respondent no. 1 are incorrect and are not based on correct facts. The petitioner denies each and every averment and contention of the counter affidavit, except those which have been admitted hereinafter and the contents of the Special Leave Petition are reiterated in response.

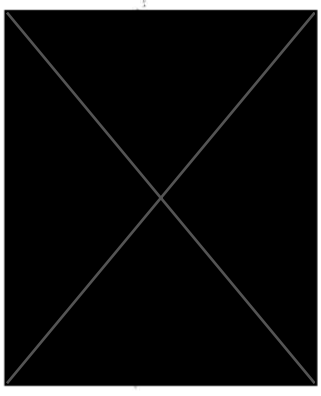
3. The present Special Leave Petition is directed against the impugned final judgment and order dated 22.06.2023 passed

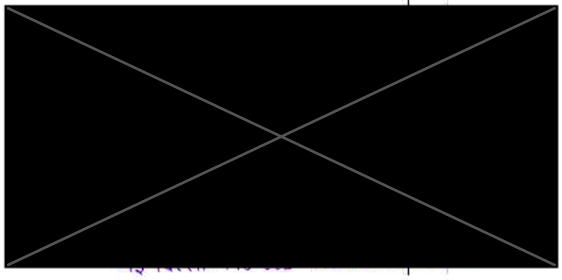
[redacted]

by the Hon'ble High Court of Kerala at Ernakulam in Writ Appeal WA No. 27 of 2023 vide which the Hon'ble High Court while allowing the Writ Appeal of the Appellant - Respondent No. 1, set aside the judgment of the Ld. Single Judge through which the Ld. Single Judge had issued a direction to the competent authority of the University to re-assess the credentials of the Respondent No. 1 herein and to publish the final rank list accordingly. The Hon'ble High Court, vide the impugned judgment and order found that the writ petition was bad for non-joinder of parties and further declared that the period spent by the Writ Appellant-Respondent No. 1 on research under the Faculty Development Programme of the Kannur University was to be counted towards the 'research experience' of the Writ Appellant for the purposes of appointment as Associate Professor as stipulated under the UGC Regulations of 2018.

4. That respondent no. 1 has miserably failed to address the issue raised by the petitioner regarding-whether respondent no. 1 did her research work while pursuing her Ph.D., simultaneously with teaching assignment, without taking any leave.

5. Section 3.11 of the UGC Regulations, 2018 clearly and in an unambiguous manner states that *the time taken to acquire Ph.D. degree shall not be considered as research/teaching experience, except if it is done simultaneously with teaching assignment without taking any kind of leave*. This has been the norm for the Faculty Improvement Program as well as for the Faculty Development Program under the Xth and XIIth plans, respectively. The respondent no. 1 has failed to





demonstrate that her research/teaching experience was done along with teaching assignment as was stipulated under Regulation 3.11 of the 2018 Regulations.

6. It is also submitted that the public notice issued by the UGC in the year 2016 had been superseded by the 2018 UGC Regulations.

7. It is respectfully stated and submitted that the UGC Regulation 2018 prescribes the necessary qualifications for appointment to various posts of teachers including the post of Associate Professor. Regulation 4.1 (II) stipulates as follows:-

> *"4.0 Direct Recruitment*
>
> *4.1 For the Disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.*
>
> *II. Associate Professor:*
> *Eligibility*
> *i) A good academic record, with a Ph.D. Degree in the concerned/allied/relevant disciplines.*
> *ii) A Master's Degree with at least 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed).*
> *iii) A minimum of eight years of experience of teaching and / or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry with a minimum of seven publications in the peer-reviewed or UGC-listed journals and a total research score of Seventy five (75) as per the criteria given in Appendix II, Table 2."*

That, it is further respectfully stated and submitted that the Kannur University, through its appointment/reappointment notification dated 22.09.2021 (referenced as B3/23389/2019), invited applications from candidates for various teaching positions on a regular basis. Apart from

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appointments to other posts, appointment to one post of Associate Professor in the Department of Malayalam was also mentioned. The notification dated 22.09.2021 itself prescribed the eligibility qualifications in accordance with the UGC regulations of 2018 for the said post. Respondent no.1 was not having the required minimum of eight years of teaching experience as mandated. Regulation 3.11 of the UGC Regulations 2018, clearly prescribed :

"3.11 The time taken by candidates to acquire M.Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. Further the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/ promotion. Regular faculty members upto twenty per cent of the total faculty strength (excluding faculty on medical / maternity leave) shall be allowed by their respective institutions to take study leave for pursuing Ph.D. degree.

9. From the above, it is clearly made out that the time taken to acquire Ph.D. degree will not be counted as research/teaching experience, except if it is done simultaneously with teaching assignment without taking any kind of leave.

10. It is respectfully stated and submitted that as per Regulation 8.2. (X) Of UGC Regulations 2018, study leave availed by the candidate can only be counted as service for the purpose of retirement benefits. The relevant extract reads as follows:

"X The period of study leave shall count as service for purpose of the retirement benefits (pension/contributory provident fund), provided that the teacher rejoins the University/College/Institution on the expiry of his/her study leave, and serve the institution for the period for which the Bond has been executed

[redacted]

[redacted]

11. It is respectfully stated and submitted that as per Regulation 4.1(II) of the 'UGC Regulations, 2018, the requirement of 'experience of teaching' refers to actual experience and not that which can be construed or inferred, as the post of Associate Professor holds extreme importance to both a University and a College.

12. It is stated and submitted that the Hon'ble Supreme Court in the case of *Annamalai University vs. Secretary to Government, Information and Tourism Department and Others, (2009) 4 SCC 590*, have held that the provisions of UGC Act are binding on all the Universities whether conventional or open.

13. It is respectfully stated and submitted that the Hon'ble Supreme Court in the case of *Gambhirdan K. Gadhvi v. State of Gujarat and Ors. [(2022) 5 SCC 179]* have held :-

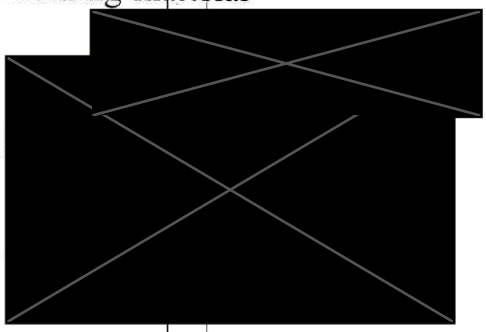
> *"16. It cannot be disputed that UGC Regulations are enacted by the UGC in exercise of power under Section 26(1)(e) and 26(1)(g) of UGC act, 1956. Even as per the UGC act every rule and regulation made under that said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulation becomes part of the Act."*

[redacted]

It is further respectfully stated and submitted that, the UGC, as the author of the regulations, has already established a view and Respondent No. 1 cannot deviate from it or contradict it. This is especially pertinent considering the binding precedents set by this Hon'ble Court, which affirm that UGC regulations take precedence over any conflicting provisions in state statutes or legislation.

[redacted]

15. That the facts stated in the above affidavit are true to best of my knowledge and have been derived from the records of the case. No part of the same is false and nothing material has been concealed therefrom.



VERIFICATION

I, the above named deponent, do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.