

ITEM NO.6

COURT NO.2

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 6378/2020

(Arising out of impugned final judgment and order dated 03-07-2019 in WA No. 2351/2018 03-07-2019 in WA No. 2354/2018 03-07-2019 in WA No. 2380/2018 03-07-2019 in WA No. 2399/2018 03-07-2019 in WA No. 2415/2018 03-07-2019 in WA No. 2420/2018 03-07-2019 in WA No. 2460/2018 03-07-2019 in WA No. 2473/2018 03-07-2019 in WA No. 2480/2018 passed by the High Court Of Kerala At Ernakulam)

JOJI ANCHANATTU AND ORS. ETC. ETC.

Petitioner(s)

VERSUS

MAHATMA GANDHI UNIVERSITY AND ORS. ETC. ETC.

Respondent(s)

**(IA No. 114912/2021 - APPLICATION FOR PERMISSION
 IA No. 46733/2020 - CONDONATION OF DELAY IN FILING
 IA No. 5869/2021 - REJOINDER)**

WITH

Diary No(s). 18359/2021 (XI-A)

(FOR ADMISSION and I.R. and IA No.96716/2021-CONDONATION OF DELAY IN FILING and IA No.96720/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 9087/2022 (XI-A)

(FOR ADMISSION and I.R. and IA No.21334/2020-CONDONATION OF DELAY IN FILING and IA No.21337/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.21336/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

SLP(C) No. 9092/2022 (XI-A)

(FOR ADMISSION and I.R. and IA No.18415/2020-CONDONATION OF DELAY IN FILING and IA No.18417/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.18416/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

SLP(C) No. 9094/2022 (XI-A)

(FOR ADMISSION and I.R. and IA No.20426/2020-CONDONATION OF DELAY IN FILING and IA No.20428/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.20427/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Diary No(s). 42892/2019 (XI-A)

(FOR ADMISSION and I.R. and IA No.21516/2020-CONDONATION OF DELAY IN FILING and IA No.21518/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.21517/2020-CONDONATION OF DELAY IN

REFILING / CURING THE DEFECTS)

**SLP(C) No. 9090/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.17471/2020-CONDONATION OF DELAY
IN FILING and IA No.17474/2020-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.17473/2020-CONDONATION OF DELAY IN
REFILING / CURING THE DEFECTS)**

**SLP(C) No. 9101/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.14164/2020-CONDONATION OF DELAY
IN FILING and IA No.14166/2020-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.14165/2020-CONDONATION OF DELAY IN
REFILING / CURING THE DEFECTS)**

**SLP(C) No. 26502/2019 (XI-A)
(IA No. 39273/2020 - CONDONATION OF DELAY IN FILING COUNTER
AFFIDAVIT
IA No. 170018/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 192044/2019 - EXEMPTION FROM FILING O.T.
IA No. 170019/2019 - EXEMPTION FROM FILING O.T.
IA No. 43812/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 192041/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 171025/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)**

SLP(C) No. 30155/2019 (XI-A)

SLP(C) No. 30195/2019 (XI-A)

**SLP(C) No. 9088/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.18617/2020-CONDONATION OF DELAY
IN FILING and IA No.18621/2020-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.18619/2020-CONDONATION OF DELAY IN
REFILING / CURING THE DEFECTS)**

SLP(C) No. 30201/2019 (XI-A)

SLP(C) No. 30202/2019 (XI-A)

SLP(C) No. 30203/2019 (XI-A)

SLP(C) No. 30156/2019 (XI-A)

SLP(C) No. 30205/2019 (XI-A)

**SLP(C) No. 30206/2019 (XI-A)
(IA No. 43622/2020 - EXEMPTION FROM FILING O.T.)**

SLP(C) No. 30196/2019 (XI-A)

SLP(C) No. 30207/2019 (XI-A)

SLP(C) No. 30208/2019 (XI-A)
(IA No. 39455/2020 - CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT)

SLP(C) No. 30197/2019 (XI-A)

SLP(C) No. 30199/2019 (XI-A)

SLP(C) No. 30209/2019 (XI-A)

SLP(C) No. 30210/2019 (XI-A)

SLP(C) No. 30160-30194/2019 (XI-A)
(FOR CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT ON IA 40735/2020 ;FOR CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT ON IA 103436/2020)

SLP(C) No. 30212/2019 (XI-A)

SLP(C) No. 30213/2019 (XI-A)

Diary No(s). 42687/2019 (XI-A)
(FOR ADMISSION and I.R. and IA No.16812/2020-CONDONATION OF DELAY IN FILING and IA No.16814/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.16813/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS ;IA No. 11718/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 30200/2019 (XI-A)

SLP(C) No. 30214/2019 (XI-A)

SLP(C) No. 30215/2019 (XI-A)
(IA No. 39334/2020 - CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT)

SLP(C) No. 30216/2019 (XI-A)
(IA No. 39297/2020 - CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT)

SLP(C) No. 9102/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.23054/2020-CONDONATION OF DELAY IN FILING and IA No.23060/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.23058/2020-EXEMPTION FROM FILING O.T. and IA No.23056/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

SLP(C) No. 9100/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.33831/2020-CONDONATION OF DELAY

IN FILING and IA No.33834/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.33833/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

**SLP(C) No. 9099/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.14065/2020-CONDONATION OF DELAY IN FILING and IA No.14067/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.14068/2020-EXEMPTION FROM FILING O.T. and IA No.14066/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)**

**SLP(C) No. 9098/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.32379/2020-CONDONATION OF DELAY IN FILING and IA No.32382/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.32383/2020-EXEMPTION FROM FILING O.T. and IA No.32380/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)**

**SLP(C) No. 9096/2022 (XI-A)
(IA No.15377/2020-CONDONATION OF DELAY IN FILING and IA No.15379/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.15378/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)**

**SLP(C) No. 9095/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.21479/2020-CONDONATION OF DELAY IN FILING and IA No.21481/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.21480/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)**

**Diary No(s). 4237/2020 (XI-A)
(IA No.24242/2020-CONDONATION OF DELAY IN FILING)**

**Diary No(s). 11653/2021 (XI-A)
(FOR ADMISSION and I.R. and IA No.72014/2021-CONDONATION OF DELAY IN FILING and IA No.72016/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.72017/2021-PERMISSION TO FILE LENGTHY LIST OF DATES)**

**Diary No(s). 18358/2021 (XI-A)
(FOR ADMISSION and I.R. and IA No.97141/2021-CONDONATION OF DELAY IN FILING and IA No.97143/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)**

Date : 11-05-2022 These matters were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDHANSHU DHULIA**

For Parties

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Mr. Roy Abraham, Adv.
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Ms. Seema Jain, Adv.
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Mr. C. K. Sasi, AOR
Mr. Abdullah Naseeh, Adv
Ms. Meena K.P, Adv.
Mr. Abhith Kumar, AOR

Mr. V. K. Sidharthan, AOR
Mr. Abhith Kumar, AOR
Mr. Biju P Raman, AOR

UPON hearing the counsel the Court made the following
O R D E R

Diary No(s). 6378/2020, 18359/2021, 4237/2020, 11653/2021 &
18358/2021

Learned counsel for the petitioners prays for and are granted
liberty to withdraw the present petitions.

The SLPs are dismissed as withdrawn.

Delay condoned.

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Petitions filed by the Mahatma Gandhi University¹ and Centre
for Professional and Advances Studies² challenge the judgment
passed by the High Court of Kerala at Ernakulam in Writ Appeal
No.2512 of 2018 and other connected matter.

While dealing with the actions of MGU and CPAS created by the

1 ("MGU" for short)

2 ("CPAS" for short)

Government of Kerala, with presence of one of the representative of the MGU on its Board, the High Court observed as under:

"The action of the University, in cohorts with the Government, to form a Society and terminate the employees in the SFI's, on grounds of abolition of posts, while the institutions are carried on under the newly formed Society smacks of legal malice. It is for an oblique purpose and indirect object; which is to set at naught the inter-parties judgments of this Court and the supreme Court in the various litigations, even prior to W.A. 442/14. It is a direct affront to rule of law and least expected of an instrumentality of the State. The decision of this Court in W.A 794/13 and connected cases, affirmed by the Supreme Court, is attempted to be circumvented by this action.

We however do not fault the formation of the Society or the transfer of the institutions and the courses, which is a policy decision. But the permanent employees of the University are to be deployed to the Society as per the requirements, on the very same terms and the excess employees retrenched in accordance with law. There can also be no transfer of employment, unless with the consent of the employees, as has been declared in Jawahar Nehru University (supra). The measure of transfer though found to be actuated by legal malice; this Court would not interfere with the formation of the Society, but to obliterate the malice, it would be appropriate to direct the University to deploy employees, with their consent, to the CPAS, in accordance with the present requirement, but on the same terms and conditions they had with the University. Those whose services are not required will be terminated by way of retrenchment, on terms we will presently put forth and those who do not consent, on terms of payment of gratuity and six months notice pay, as provided in the Statutes."

After considering the entire controversy, the conclusions were arrived at in segment XII of the judgment as under:

"XII (i) We allow all the writ appeals except W.A. Nos.10, 663 & 1018 of 2019 and the claims of appellants 4 to 7 in W.A. No.9 of 2019, setting aside the judgment

of the learned Single Judge and finding the terminations illegal.

XII (ii) W.A. Nos.10, 663 & 1018 of 2019 and the claims of appellants 4 to 7 in W.A. No.9 of 2019 shall stand rejected and the following reliefs and directions shall not apply to them.

XII (iii) The resolution of the Syndicate produced at Exh.P21 (W.A. No.156/2019) and the consequent termination of the appellants by orders similar to Exh.P22 (W.A. No.156/2019), in the appeals allowed, would stand set aside.

XII (iv) We declare the appellants to be permanent employees of the University, having the status of Teachers of the Self financing Institution, which has the status of an unaided affiliated college, managed by the University.

XII (v) The termination of the appellants having been found illegal they would be restored to the services of the University and deemed to have been continued in the service of the University uninterruptedly with all benefits de hors the orders of termination, which are set aside.

XII (vi) We would not interfere with Ext. P23 (W.A. No.156/2019) since we do not find any infirmity in the constitution of the Society which was for the purpose of better administration and management of the SFI's. The formation of the Society and the transfer of SFI's by the University, are decisions which do not fall for interference by way of judicial review and we decline such prayers.

XII (vii) The formation of the Society and the transfer of the SFI's cannot affect the service of the appellants who are declared to be permanent employees of the University by the Supreme Court and this Court. They are to be either deployed to the Society Or employed in the University or retrenched in accordance with law.

XII (viii). The appellants who are now engaged by the CPAS engaged by CPAS, the will be deemed to be deployed by the university on identical terms and conditions they had with the University. Their pay and allowances will stand protected. The liability to the same shall be either on the Society or the University, as decided by the State; which decision is final as per

the MoA and shall be binding on both.

XII (ix) The appellants shall be paid their entire back wages due within three months from the date of receipt of a copy of this judgment and shall be continued to be paid in accordance with the regular scales of pay they enjoyed earlier, with increments granted on the due dates starting from the 10th of this month, till and if they are retrenched.

XII (x) Where by reason of lack of qualification or by abolition of a course or otherwise, a teacher is terminated or a post abolished by the Society then the appellants who are thus terminated, shall be retrenched with six months notice, as provided in Statute 2 of Chapter III of the MG University Statute, 1997 or pay in lieu of notice and paid one months salary as on the date of termination, for every completed year of service, which includes the gratuity payable under the payment of Gratuity Act, 1972 as also retrenchment compensation akin to Section 25F of the ID Act.

XII (xi) The liability to retrenchment compensation and for salary to those appellants restored to the service shall be that of the University."

We have heard Mr. P.N. Mishra and Mr. Siddharth Luthra, learned Senior Advocates for MGU in various matters. We have also heard Mr. P.V. Sudershan, learned Senior Advocate for CPAS. Ms. Sakshi Kakker, learned advocate also advanced submissions for MGU.

Having gone through the material on record, in our view, no interference is called for in the present batch of matters. We affirm the view taken by the High Court.

One of the submissions advanced by Mr. P.N. Mishra, learned Senior Advocate to the effect that the concerned persons having opted to work under CPAS and having received salary for their work with CPAS, if are allowed back wages in terms of the directions issued by the High Court, it may amount to give double benefit of

remuneration to the persons concerned, however needs acceptance.

In case, there are such instances, whatever has been made over by CPAs shall be accounted for while granting back wages in terms of the directions issued by the High Court. The rest of the directions issued by the High Court are left intact and shall be operative. All the directions shall be complied with within four months.

The SLPs are disposed of with aforesaid directions.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER

