IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

WP(C) NO. 4651 OF 2023

PETITIONER:

T.N. JAYASANKAR
AGED 55 YEARS
VRINDAVAN, 12/809 KRA LANE-6,
HOUSE NO. 5, INFORPARK ROAD,
KAKKANADU, ERNAKULAM,
PIN - 682030

BY ADVS.
SURIN GEORGE IPE
SREEDEV U

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF TOURISM,
THIRUVANANTHAPURAM, PIN - 695001

2 KERALA INSTITUTE OF TOURISM & TRAVEL STUDIES
RESIDENCY, THYCAUD, THIRUVANANTHAPURAM,
REPRESENTED BY ITS DIRECTOR, PIN – 695014

BY
SMT. ANIMA M, GOVERNMENT PLEADER
SRI. SHYAM PADMAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13.02.2025, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

N. NAGARESH, J.

‘‘

W.P.(C) No.4651 of 2023

‘‘

Dated this the 8th day of April, 2025

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~ ~

The petitioner is a Post Graduate in Master of Tourism Administration. The petitioner holds a Certificate in Airline Management and a Post Graduate Diploma in Tourism and Travels Studies. The petitioner was appointed as Special Officer for conducting a study for restructuring of District Tourism Promotion Councils (DTPC) in the State. During this period, the petitioner was reporting to the 2nd respondent-Kerala Institute of Tourism and Travel Studies (KITTS).

2. The petitioner was appointed as a Lecturer in KITTS, Ernakulam Chapter with effect from

01.08.2002. The 2nd respondent-KITTS established Kerala Institute of Hospitality Management Studies (KIHMS) at Malayattoor. The KITTS appointed the petitioner as Lecturer in KIHMS as per Ext.P2 appointment order dated 30.06.2006.

3. The petitioner states that he was appointed as Project Assistant in KITTS in March, 2002 and worked till July, 2002. He worked as Guest Lecturer in KIHMS from 01.02.2002 till 15.05.2005 and from 17.10.2005 till 26.01.2006. The petitioner states that proposal regarding regularisation of the petitioner was taken up by the 32nd Executive Committee meeting of the KITTS held on 11.06.2009. In the meanwhile, KIHMS was renamed as KITTS Study Centre on 10.06.2009.

4. The KITTS permitted the petitioner to go on deputation as Secretary of DTPC as per Ext.P5 letter dated 10.08.2011. The petitioner took charge as Secretary, DTPC, Ernakulam on 16.08.2011. The

Executive Committee meeting of KITTS held on 11.04.2012 decided to regularise the services of their staff. The 2nd respondent issued Ext.P11 letter dated 20.03.2015 to the Secretary to Government seeking to regularise the petitioner in service. The regularisation of services of the petitioner was approved by the Government on 05.03.2016 and the proposal was sent to the Finance Department for approval as per Ext.P15. To the surprise of the petitioner, the Government retracted from their earlier stand as per Ext.P16 and decided not to regularise the services of the petitioner.

5. The petitioner states that one Sri. Sajith Kumar, who was working as Peon, was regularised in service with retrospective effect as per Ext.P19. The Government also concurred the retrospective regularisation of Smt. Sindhu S., who was appointed as Lecturer on contract basis, as per Ext.P20. The petitioner alone has been subjected to hostile discrimination in the

matter of regularisation of service.

6. The petitioner filed W.P.(C) No.21336/2019 seeking to regularise his service. This Court, as per Ext.P21 judgment dated 21.06.2022, set aside Ext.P16 and directed the Government to take a final decision on the request of the petitioner for regularisation. The Government, however, again declined the request as per Ext.P22 order dated 29.12.2022. The petitioner therefore challenges Ext.P22 order and seeks to direct the respondents to regularise the services of the petitioner and to grant him all service and monetary benefits including pay revision with retrospective effect from the date of joining.

7. The 1st respondent resisted the writ petition filing counter affidavit. The 1st respondent submitted that as per letter dated 19.03.2002, KITTS had assigned the petitioner as Special Officer for assisting Dr. C.V. Anand Bose for conducting study on the functioning

of DTPCs and to redefine its role. As per Ext.R1(a) order dated 25.07.2002, the petitioner was again engaged as Lecturer on contract basis in KITTS. Later, an advertisement was published as per Ext.R1(b) dated 15.02.2006 for selection to the post of Lecturer (Travel and Tourism).

8. The petitioner was selected and appointed as Lecturer on contract basis in the scale of pay of ₹6675-10550. The contract appointment was only for a period of three years. After the expiry of the contract period, the question of regularisation of the petitioner was taken up and the proposal was rejected by the Executive Committee meeting held on 11.06.2009 as per Ext.R1(d).

9. The 1st respondent submitted that assumption of additional charge as DTPC Secretary by the petitioner was not deputation. It was only a permissible work arrangement. The 36th Executive Committee decided to extend the term of the petitioner on

contract for a period of one year. The 1st respondent pointed out that when the post of Lecturer was created in KIHMS, it was made clear that appointment to the post will be made only on contract basis for a period of three years. Therefore, the Government rejected the proposal for regularisation of that period.

10. The petitioner is a contractual appointee. He is seeking regularisation as he is continuing work for more than ten years. The request of the petitioner goes against the judgment of the Apex Court in ***Secretary, State of Karnataka and others v. Umadevi and others*** *[(2006) 4 SCC 1]*. The writ petition is therefore liable to be dismissed.

11. I have heard the learned counsel for the petitioner, the learned Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the 2nd respondent.

12. The petitioner holds Degree of Master of Tourism Administration from Pondichery University, a Certificate in Airline Management from the Institute of Airline Management, Chennai and Post Graduate Diploma in Tourism and Travel Studies from the Kerala Institute of Tourism and Travel Studies. The Kerala Institute of Tourism and Travel Studies (KITTS) is an Autonomous Body established by the Government of Kerala. The Minister for Tourism, Government of Kerala is the Chairman of KITTS. The Director of KITTS is appointed by the Government of Kerala. Secretaries of the Departments of Tourism and Finance, the Director of the Department of Tourism, etc. are among the Executive Committee Members of KITTs. Therefore, it is evident that KITTS is a Society on which Government exercises deep and pervasive control.

13. The petitioner was appointed to assist the Special Officer for conducting a study of District

Tourism Promotion Councils (DTPC) in the State. Ext.R1(a) dated 25.07.2002 would show that the petitioner was appointed as Lecturer on contract basis with effect from 01.08.2002 in the Ernakulam Chapter of KITTS, terminating the then existing arrangement to assist the Secretary / Special Officer in the preparation of report on restructuring DTPCs.

14. The KITTS established Kerala Institute of Hospitality Management Studies (KIHMS) at Malayattoor and the Government had accorded sanction to create various posts in KIHMS, as per Ext.P1. The petitioner applied for the post of Lecturer in KIHMS and the petitioner was appointed as Lecturer in the scale of pay as per Ext.P2 order dated 30.06.2006 of the Director, KITTS.

15. Ext.P3 Certificate issued by the Director, KITTS would show that the petitioner's contribution to the Institute was laudable and the petitioner almost singlehandedly managed the Courses at KIHMS and

assisted the Principal in Charge for two days a week. Ext.P3 would indicate that the petitioner used to put lots of efforts in arranging good placements for the students and even managed to place some of the students in Maldives and Dubai.

16. Ext.P4 Minutes of the 32nd Executive Committee Meeting of the KITTS would show that the Government, as per GO dated 17.01.2006 had created one post of Lecturer, Tourism and Travel Studies and the petitioner was appointed as Lecturer on 01.07.2006. The Executive Committee recommended that a decision regarding regularisation of the petitioner as faculty of KIHMS may be taken. The KIHMS was renamed as KITTS Study Centre, Ernakulam.

17. The pleadings would indicate that the 2nd respondent permitted the petitioner to go on deputation as the Secretary of District Tourism Promotion Council as per Ext.P5 letter dated 10.08.2011. The District Collector and

Chairman, DTPC had made Ext.P6 request to the Director, Department of Tourism requesting to issue orders to permit the petitioner to hold full charge of Secretary, DTPC and the additional charge of the post he held in the KITTS. Ext.P6 would show that the lien of the petitioner is to be retained in the KITTS. Pursuant thereto, the petitioner took charge as Secretary, DTPC, Ernakulam on 16.08.2011 which is evident from Ext.P7.

18. By Ext.P8 Minutes of the 36th Meeting of the Executive Committee of the KITTS held on 11.04.2012, it was resolved to regularise the services of staff of KITTS based on the advice of the Government. Pursuant to Ext.P8, Smt. Seema C.L., who was also recommended for regularisation, was regularised in service and orders were issued sanctioning the same. The 38th Meeting of the Executive Committee of KITTS again decided to place the matter of regularisation of the petitioner in the next Executive Committee Meeting after

obtaining advice from the Government in the matter of regularisation.

19. The 2nd respondent sent Ext.P7 letter dated 20.03.2015 to the Secretary to Government, Tourism (B) Department underscoring the need for regularisation of the petitioner. By Ext.P12, the Government required the 2nd respondent to give particulars regarding sanctioned posts for the purpose of regularisation of the petitioner. Ext.P13 letter of the Principal Secretary, Tourism (B) Department required the 2nd respondent to give proposals for creation of posts in KITTS. The Director gave Ext.P4 reply stating that for the smooth conduct of Courses, the service of the petitioner and four others is necessary.

20. Ext.P15 notes of the Deputy Secretary to Government, Tourism Department would show that the Cabinet meeting held on 02.03.2016 had taken a decision to appoint one Sri. Jimmy Kurian and the petitioner on a

permanent basis with effect from the date on which they joined service. The Deputy Secretary ordered to forward the proposal for examination by the Finance Department. However, Ext.P16 would show that the proposal was rejected by the Government on the ground that regularisation of service of the petitioner would go against the judgment of the Hon'ble Apex Court in ***Umadevi*** (supra). Therefore, it is evident that the Government had made recommendation for regularisation of the services of the petitioner and it was not implemented on the ground that it would go against the decision of the Hon'ble Apex Court in ***Umadevi*** (supra). Whether the said reason is legally justified or not is the question arising for consideration in this writ petition.

21. The petitioner had earlier approached this Court filing W.P.(C) No.21336/2019 seeking directions for regularisation of his services. This Court noted that no reasons have been stated as to how the proposal for

regularisation of appointment of the petitioner would fall foul of ***Umadevi*** (supra). This Court noted that even assuming that the arguments of the respondents are accepted, the petitioner has evidently completed more than 15 years of service and going by the period fixed in ***Umadevi*** (supra), the petitioner is eminently eligible for regularisation, though the question whether his appointment would in any manner fall within the prohibited categories stipulated in ***Umadevi*** (supra) is to be looked into. This Court therefore directed the Government to reconsider the request of the petitioner for regularisation as recommended by the KITTS.

22. Pursuant to Ext.P21 judgment in W.P.(C) No.21336/2019, the Government issued Ext.P22 order rejecting the claim of the petitioner. In Ext.P22, the Government has conceded that certain other employees of the KITTS were granted regularisation on the basis of judgments of this Court. The proposal for regularisation of

the services of the petitioner was rejected on the basis of the judgment of the Hon'ble Apex Court in ***Umadevi*** (supra). In Ext.P22, the Government has observed that grant of regularisation to another employee pursuant to court order cannot be a reason for the petitioner to seek regularisation.

23. It is to be noted that the petitioner was well qualified when he was appointed as a Lecturer in KITTS in the year 2006. Ext.P3 would show that during the initial years of the KITTS, the petitioner contributed to the Institute in a laudable manner. The petitioner has been singlehandedly managing the Courses at KIHMS / KITTS Study Centre. The petitioner's efforts in arranging good placements for the students and in other areas, is amply evident from Ext.P3. The KITTS had recommended regularisation of his services. Ext.P15 file notes would indicate that the Cabinet had decided to give regular/permanent appointment to the petitioner with effect

from the date from which the petitioner was appointed. However, the Government has gone back from its position holding that regularisation of services of the petitioner would be against the judgment of the Apex Court in ***Umadevi*** (supra).

24. In ***Amarkand Rai v. State of Bihar and others*** *[(2015) 8 SCC 265]*, the Hon'ble Apex Court held that there is an exception to the general principles against regularisation enunciated in ***Umadevi (3)***, if the following conditions are fulfilled:

> (i) The employee concerned should have worked for ten years or more in duly sanctioned posts without the benefit or protection of the interim order of the court or Tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
>
> (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But, where the person employed possessed the

> prescribed qualifications and was working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

25. In the case of the petitioner, the petitioner has worked for nearly 15 years. The KITTS employed the petitioner and continued him in service voluntarily and continuously for more than ten years. The respondents have no case that the recruitment of the petitioner was illegal. Therefore, going by the judgment of the Hon'ble Apex Court in ***Amarkand Rai*** (supra), the petitioner is entitled to regularisation of his services.

26. The Hon'ble Apex Court has held in the judgment in Vinod Kumar and others v. Union of India and others [Civil Appeal Nos.5153-54 of 2024] that the judgment in the case of ***Umadevi*** (supra) distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance

with the prescribed rules and procedure and such appointment cannot be said to have been made illegally if they had followed the procedure for regular appointments.

27. For all the afore reasons, I find that the petitioner is entitled to regularisation of his services. Ext.P22 is therefore set aside. The respondents are directed to regularise the service of the petitioner and to grant him all consequential service and monetary benefits. Necessary orders shall be passed within a period of three months.

The writ petition is disposed of as above.

Sd/-

N. NAGARESH, JUDGE

aks/05.04.2025

APPENDIX OF WP(C) 4651/2023

PETITIONER'S EXHIBITS

Exhibit-P1	**THE TRUE COPY OF THE ORDER NO. 20/2006/TSM DATED 17-01-2006**
Exhibit-P2	**THE TRUE COPY OF THE APPOINTMENT LETTER DATED 30.06.2006**
Exhibit-P3	**THE TRUE COPY OF THE APPRECIATION LETTER ISSUED BY THE 2ND RESPONDENT DIRECTOR DATED 04.04.2006**
Exhibit-P4	**THE TRUE COPY OF THE AGENDA NOTES OF 32ND EXECUTIVE COMMITTEE MEETING OF 2ND RESPONDENT KITTS DATED 11.06.2009**
Exhibit-P5	**THE TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 10.08.2011**
Exhibit-P6	**THE TRUE COPY OF THE LETTER ISSUED BY THE SECRETARY DTPC DATED 16.08.2011**
Exhibit-P7	**THE TRUE COPY OF THE REPORT OF TRANSFER OF CHARGE**
Exhibit-P8	**THE TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF MEETING OF THE 36TH EXECUTIVE COMMITTEE DATED 11.04.2012**
Exhibit-P9	**THE TRUE COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF 38TH EXECUTIVE COMMITTEE KITTS HELD ON 27.11.2013**
Exhibit-P10	**THE PHOTOSTAT COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF 40TH EXECUTIVE COMMITTEE KITTS HELD ON**

17.03.2015

Exhibit-P11	**THE PHOTOSTAT COPY OF THE LETTER NO. 2668/KITTS/MAL/14 DATED 20.03.2015 FROM 2ND RESPONDENT DIRECTOR KITTS TO THE SECRETARY TO GOVERNMENT; TOURISM**
Exhibit-P12	**THE PHOTOSTAT COPY OF THE LETTER NO. 1613/B3/2015/TOURISM DATED 5.06.2015 TO THE DIRECTOR KITTS**
Exhibit-P13	**THE PHOTOSTAT COPY OF THE LETTER NO. 1613/B3/2015/TOURISM DATED 15.02.2016 TO THE DIRECTOR KITTS**
Exhibit-P14	**THE TRUE COPY OF THE LETTER NO. 475/KITTS/MALAYATTOOR/2016/KITTS DATED 19.02.2016 ALONG WITH REPORT ENCLOSED THERETO**
Exhibit-P15	**THE PHOTOSTAT COPY OF THE RELEVANT PROCEEDINGS AS PER FILE NO. 1613/B3/15/TOURISM DATED 5-03-2016**
Exhibit-P16	**THE TRUE COPY OF THE LETTER ISSUED BY THE GOVERNMENT DATED 01.05.2017**
Exhibit-P17	**THE TRUE COPY OF THE JUDGMENT DATED 23.05.2019 IN W.P.(C) 17241/2018**
Exhibit-P18	**THE TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 20.08.2019**
Exhibit-P19	**THE TRUE COPY OF THE GOVERNMENT ORDER DATED 06.11.2021**
Exhibit-P20	**THE TRUE COPY OF THE ORDER DATED 16.08.2003 ISSUED BY THE 2ND RESPONDENT REGULARIZING THE SERVICE OF THE SMT. SINDHU S**
Exhibit-P21	**THE TRUE COPY OF THE JUDGMENT DATED**

21.06.2022 IN W.P.(C)21336/2019

Exhibit-P22	**THE TRUE COPY OF THE ORDER OF THE GOVERNMENT DATED 29.12.2022**
Exhibit-P23	**THE TRUE COPY OF THE COMMUNICATION DATED 25.06.2008 ISSUED BY THE 2ND RESPONDENT**
Exhibit-P24	**THE TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED 02.02.2023**

RESPONDENT'S EXHIBITS

Exhibit R1(a)	**True copy of order of the KITTS dated 25.07.2002**
Exhibit R1(b)	**True copy of the newspaper advertisement of Mathrubhoomi daily dtd 15.02.2006 for selection to the post of lecturer (Travel and tourism was published on 15.02.2006**
Exhibit R1(c)	**True copy of the proceedings issued by KITTS on dtd 24.01.2006**
Exhibit R1 (d)	**True copy of the extract of minutes of the Executive committee meeting on 11.06.2009**
Exhibit R1(e)	**True copy of the order dated 16.07.2012 issued by KITTS**
Exhibit R1 (g)	**True copy of the appointment letter dtd 16.08.2003 issued to Ms.Sindhu**
Exhibit R1(f)	**True copy of the daily newspaper Malayala Manorama notification dtd 03.03.1998**